

#1 In the Matter of A-1 Restoration Inc. NOV and Order to Comply No. 053106001, June 1, 2006.  
1-10-07  
9:00 a.m. - 10:30 a.m.

Side 1

Hearing Officer: I am Ernie Wessman who has been appointed by the Utah Air Quality Board for hearing this matter. Fred Nelson is here representing the hearing officer and acting as legal counsel to the Air Quality Board. This proceeding is being held at the request of A-1 Restoration, Inc. And the proceeding is for the purpose of hearing the appeal of a Notice of Violation and Order to Comply, Number 053106001, dated June 1, 2006, issued by the Executive Secretary to A-1 Restoration, Inc. As required by the Utah Air Quality Rules, Utah Administrative Code R307-103-4(1), this hearing is to be conducted as a formal hearing under the Utah Administrative Procedures Act, Title 63, chapter 46b of the Utah Code.

Persons making statements and other witnesses will be sworn. Comments and questions should be confined to the subject at hand. Comments and questions that are not pertinent to the subject of the hearing will be ruled out of order. Any person testifying at the hearing may be asked questions by myself and interested parties at this hearing. Interested parties will be allowed to introduce evidence, examine and cross-examine witnesses, make arguments and participate in the proceedings. A transcript will be prepared following this hearing as provided by the Utah Administrative Procedures Act.

The order of procedure and presentation of evidence for the hearing will be as follows: first, the Division of Air Quality staff will present the information that forms the basis for the notice of violation and order, and staff will be represented by Christian Stephens; second, A-1 Restoration will then have the opportunity to present information in response; third and finally, any rebuttal evidence by staff will be received.

After receipt of all the testimony, as hearing officer, I will prepare a recommendation for the Utah Air Quality Board to either uphold, modify or rescind the notice of violation and order. The Utah Air Quality Board will then consider the matter at a regularly scheduled meeting and make a final decision. A written order will thereafter be issued pursuant to Utah Code Annotated Section 63-46b-10.

Are there any questions about the process that we will be following today?

Mr. Hernandez: No, not from A-1.

Hearing Officer: Okay, Christian?

Mr. Stephens: No.

Hearing officer: Very well, then, we'd like to begin by having Division of Air Quality staff presenting the information that formed the basis for the notice of violation and order to comply.

Mr. Stephens: Thank you. Just as a few preliminary matters, we just want to thank all the parties for being here today. This is how the process works, allows the parties that have been issued a notice of violation to have a chance to come in and explain their side of things. We would like to make an initial request of the hearing officer. Everybody has been given a copy of the administrative record and we would like to make a formal request that that entire record be admitted as evidence in this hearing because we'll be referring to it many times today.

Hearing Officer: Okay. The formal record that has been submitted -- And as I understand, all the parties have received this.

Mr. Stephens: Yes, everybody has received it.

Hearing Officer: It is admitted to the record then, in it's entirety.

Mr. Stephens: Great, thank you. We've prepared for the hearing officer a set of Exhibits. These are all in the administrative record, but just for convenience, these are the documents we plan to refer to specifically today to make it a bit faster for you. Every time we refer to one in there, we will also make reference to the administrative record so everyone can follow along. But there's nothing in there that is not also in the other documents as well. Mr. Nelson brought to my attention yesterday that A-1's original request for a hearing was overlooked when we compiled the administrative record, but it certainly would be considered part of it as well, so there's copies for everyone.

Mr. Hernandez: I do believe this is in there, the administrative record.

Mr. Stephens: Okay. I looked through it yesterday and I didn't see it, but if it is that's fine. I just wanted to make sure that it was on the record, that that was part of the administrative record.

Mr. Hernandez: If not, we were going to enter it anyway, so that would be fine with us.

Hearing officer: And since this was not in the original, as far as I could find. We will admit, then, this Exhibit, A-1 Restoration's letter of May 6, 2006, requesting a hearing.

Mr. Stephens: Yes. Thank you. And A-1 Restoration itself has submitted to me a number of documents that it would like to have considered today if the Executive Secretary doesn't have any objection to that, so I went ahead and made copies for everyone. These are the documents I assume they plan to refer to today. So it will be up to A-1 to decide how they want to use them, but there's no objection from the Executive Secretary to them using them.

Mr. Hernandez: That's fine. We were going to enter these in as defense Exhibits to our defense. This would be great if we could just get them in right now and then they're already in the record.

Hearing Officer: Very well, then I'll consider that a request to enter these documents as Exhibits from A-1 Restoration as part of their presentation. Christian, are you going to be referring to these as well?

Mr. Stephens: No, not unless they do.

Hearing Officer: Okay. Those documents include a letter dated December 18, 2006, to Christian Stephens regarding information for hearing. Do you know how many pages are in this?

There's a -- the following in it. There's a 2005 calendar page; a daily report dated August 5, 2005; another one, a daily report, dated August 4, 2005; and affidavit dated September 9, 2006 to Chester Goodman; a fax transmittal from Datacam Laboratories dated Monday, August 22, 2005; an analytic report page, page one of two, dated August 22, 2005 from Datacam, an analytic request form dated August 22, 2005 from Datacam; and then an analytic report, page 2 of 2, from Datacam dated August 22, 2005; and finally, a request for hearing dated May 6, 2006 from A-1 Restoration.

Mr. Nelson: Let me ask a question. I believe it's maybe June 5th, isn't it, the last letter? Because it's written as May 6th, but the notice of violation was issued, dated June 1st. So I assume -- June 1st, I assume the request for hearing is June 5th.

Hearing officer: Matthew, on the last page, document, is your date, then, transcribed incorrectly? By that I mean, is there's a typo in your date where it says 5-6-06? Do you mean May 6th or June 5th?

Mr. Hernandez: It may have been a typographical error, but what I see is entered here is May 6, 2006.

Mr. Nelson: I guess my question is because the notice of violation that you're appealing with that number is dated June 1st. So you're aware -- It's probably supposed to be June 5th.

Mr. Hernandez: Well, we actually asked for several hearings. This one here might have been the first time that we requested a hearing, but if I'm not right, from Bryce and Bob Ford, we requested this hearing several times. One for the informal hearing and one for the -- this could have possibly been for the informal hearing and we haven't gotten the request for the formal one yet here.

Mr. Nelson: I noticed that the date stamp on the copy here is June 9th.

Mr. Hernandez: Then it's probably June 6th and you're probably right and not May 6th and it's a typographical error. I believe that to be ...

Hearing officer: That's a duplicate of this other one?

Mr. Stephens: Yes.

Hearing officer: Very well.

Mr. Stephens: That's what the Division received and would request a hearing for this particular notice of violation. All right. As the hearing officer's indicated, the purpose of this hearing is to lay out the Division of Air Quality's basis for why it issued the notice of violation and we believe the most straightforward way to do that is to run through the events that happened in roughly a chronological order, the order that they took place and also to conclude by pointing out the legal standard that A-1 was required to abide by as a regulated entity. And ideally, once the facts are on the table, we believe it will be clear why the Executive Secretary issued the notice of violation. So we'd like to call as our first witness Steve Beach.

Mr. Hernandez: Can I interject for a minute and ask that why everyone that are witnesses remain in this room, why the witnesses can't go out in another room? There's no reason that one witness

should be able to gather information from another witness and kind of make his testimony coincide with the other one. I believe that all witnesses should be out in the hallway and privacy of what they're saying to a witness on stand, you know, so that no one is able to adjust their testimony.

Hearing officer: Do you have any objection?

Mr. Stephens: It's a public hearing. I didn't see why there would be a problem with it. However, does the hearing officer have a particular objection to it? Every time we ever had another hearing, particularly when we had one down in Richfield, all the witnesses were all in the room together at the same time, and I didn't see that as a problem.

Mr. Hernandez: A-1 was never in that hearing. This is A-1's hearing and it's A-1's --

Mr. Stephens: Well, that's true.

Mr. Hernandez: The same would go for our witnesses too.

Hearing officer: The Richfield hearing you're talking about was for the Sevier County citizens?

Mr. Stephens: Yes.

Hearing officer: Ok, well that was a request for agency action concerning -- I think the request is reasonable. So your request that the various witnesses who are not currently being interviewed should wait outside.

Mr. Stephens: That's fine.

Mr. Hernandez: I think it's just fair for all parties.

Mr. Stephens: That's fine.

(Background talking)

Recorder: Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

Steven Beach: Yes, I do.

Mr. Stephens: So for the record, could you state your name?

Steven Beach: Yes, my name is Steven Beach.

Mr. Stephens: And what's your position?

Steven Beach: I am a licensed environmental health scientist.

Mr. Stephens: Who do you work for?

Steven Beach: I work for the Salt Lake Valley Health Department, the Division of Environmental Health.

Mr. Stephens: Okay. How long have you held the position that you currently have?

Steven Beach: I've worked at the Health Department for 10 years.

Mr. Stephens: And how long -- you say you've been there for 10 years. Have you held that position the entire time?

Steven Beach: Yes I have.

Mr. Stephens: Okay. What are your duties with respect to your position?

Steven Beach: There's several duties. I respond to complaints, both hazardous waste and water quality complaints. I deal with asbestos inquiries and permit facilities.

Mr. Stephens: Okay. And do you conduct specifically asbestos inspections?

Steven Beach: Yes.

Mr. Stephens: Okay. How many inspections or other duties related to asbestos do you conduct in a month?

Steven Beach: Normally a month, it's mostly consultations. The Health Department, we get a lot of phone calls mostly from homeowners and we try and help them out. And then once in a while I'll go out and try and assist homeowners if they have questions on asbestos.

Mr. Stephens: Okay. What is the enforcement relationship between where you work at the Salt Lake Valley Health Department and the Utah Division of Air Quality?

Steven Beach: The Health Department, probably for the last 5 years, we mostly concentrate on helping homeowners, as I said. We really don't get too involved in the regulatory part that the state already provides. So our main focus is trying to help homeowners with asbestos.

Mr. Stephens: Okay. Are you familiar with A-1 Restoration?

Steven Beach: Yes.

Mr. Stephens: Have you conducted inspections that have involved A-1 Restoration?

Steven Beach: Yes, I have.

Mr. Stephens: Okay. Have you ever conducted an inspection of A-1's warehouse at 3345 South 300 West in South Salt Lake?

Steven Beach: Yes, I did.

Mr. Stephens: When did you conduct an inspection there?

Steven Beach: It was August 18th, 2005.

Mr. Stephens: Okay. What prompted you to conduct that inspection?

Steven Beach: The Health Department received a complaint. The original complaint was complainings -- they thought there was a problem with hazardous waste. So I went to check it out and see what was going on.

Mr. Stephens: Okay. I gave you a copy of Executive Secretary's Exhibit A in that folder. It's document 4.k in the main administrative record. Are you familiar with this document?

Steven Beach: Yes, I am.

Mr. Stephens: Okay. Will you please tell us what this document is?

Steven Beach: Yeah. This is how the Health Department keeps track of all of its phone calls or complaints that come in. A secretary will get it, enter it into the computer. This is where it was entered that they thought it was a hazardous waste complaint.

Mr. Stephens: Okay. Did you personally speak with the person who filed this complaint?

Steven Beach: Yes. I called to get a clarification.

Mr. Stephens: Okay. What did that person say to you?

Steven Beach: The person was concerned when I was talking to her. She explained she was just worried that this business was dealing with a product that was blowing over into their business and they were worried about any kind of health effects that would affect them.

Mr. Stephens: Okay. When you arrived at A-1's warehouse, was anyone from A-1 Restoration present?

Steven Beach: Yes. They had 2 employees there.

Mr. Stephens: Okay. Did you speak to anyone?

Steven Beach: Yes.

Mr. Stephens: Okay. What did you say to them.

Steven Beach: I just explained why I was there. I just said that, you know, the neighbor next door was concerned of some blowing material that was coming from their warehouse over to their area.

Mr. Stephens: Okay. What did you see while you were there?

Steven Beach: When I arrived, there was a trailer there that was full of blown-in insulation and the door was open into the warehouse and there was bags of material.

Mr. Stephens: Okay. Was the insulation that was in the trailer, was it in a container of any kind?

Steven Beach: No. It was being taken out of some bags and put into the trailer.

Mr. Stephens: Okay. Was the insulation wet or dry?

Steven Beach: It was dry.

Mr. Stephens: Okay. As a result of what you saw, did you contact the Division of Air Quality?

Steven Beach: Yeah. Once I found out that it was A-1 -- I know A-1 real good. I knew that they are licensed under the State and so that's when I made a referral to the State and said, you know, there might be some problems here, but I continued on my investigation.

Mr. Stephens: Okay. Did you record what you found and saw?

Steven Beach: Yes. I put it in my notes in the computer of what I saw.

Mr. Stephens: I have Executive Secretary's Exhibit B. It's also located at 4.m in the main administrative record. Are you familiar with these photographs?

Steven Beach: Yes.

Mr. Stephens: Okay. Who took them?

Steven Beach: I did.

Mr. Stephens: Okay. And what do these photographs depict? If you would, walk through each one perhaps indicating for the hearing officer what you're referring to.

Steven Beach: Sure. The first one is A-1's warehouse is just there right the center where that red car is and that trailer is. That's where the complaint was. Picture number 2 is just a kind of a close-up with a door open showing the back of the trailer, the ground there and the bags. Picture number 3 is just kind of more with the door open. I just took a picture showing the bags

in there. Picture 4 is just more of a close-up of the bags that were piled up in there. Picture 5, again, are the bags. Picture 6 is a picture of the warehouse that I just took when I was in there. And picture 7 shows the blown-in insulation that appears that was in the trailer.

Mr. Stephens: Okay. Thank you. Now, could you tell where the materials that you saw came from, what their origin or source was?

Steven Beach: No. When I was there I talked to the employees. They told me the job it came from.

Mr. Stephens: Okay. And so what job did they tell you it came from?

Steven Beach: They said it came from the Arbor Commercial Project, that, I guess, is out in West Jordan or South Jordan.

Mr. Stephens: Okay. Now, did you take any samples of any kind while you were there?

Steven Beach: Yeah. When I was talking to them they explained, you know, the blown-in insulation, that it -- the job that they're working on. They said that they had the, you know, proper documents, but when I looked down on the ground, if you look in picture number 2 that I took, you can look right next to that red pole and I observed some white material that looked like asbestos. Can you ask me the same question? I can't remember. I got sidetracked.

Mr. Stephens: Well, the question is, did you take samples of any kind while you were there?

Steven Beach: Oh, yeah. I took 3 samples from the white stuff I saw on the ground.

Mr. Stephens: Okay. Now what ... is there a type of sample that you took. Was there a name for it?

Steven Beach: It's just a grab sample. I took 3 grab samples.

Mr. Stephens: Okay. Did you take these samples in the presence of A-1's employees?

Steven Beach: Yes, I did.

Mr. Stephens: Okay. Did anyone say anything to you about where the sample should be taken from?

Steven Beach: The 2 outside, no one objected. The one inside, I went to sample and Mr. Hernandez tried to help me take a sample of some blown-in insulation, but I took one just next to it to some suspect material that was white in nature.

Mr. Stephens: Was it necessary to take the samples or could you have determined whether there was asbestos only by sight?

Steven Beach: The normal procedures to find out if something does contain asbestos is you need to confirm it with a laboratory analysis.

Mr. Stephens: Okay. What's the process that you follow, then, to have those samples examined?

Steven Beach: What I did is I took the samples, I secured them in Ziploc baggies, and from there, I delivered them to a laboratory and filled out a chain of custody.

Mr. Stephens: Okay. Now which laboratory did you take it to?

Steven Beach: To Dixon Information.

Mr. Stephens: Okay. Now, I have Executive Secretary's Exhibit C. It's document 4.1 in the administrative record. Are you familiar with this document?

Steven Beach: Yes.

Mr. Stephens: Okay. Could you please tell us what it is?

Steven Beach: Yes. This is the sample results from the 3 samples that I took to the laboratory.

Mr. Stephens: Okay. Now, according to the analysis report that you're holding, what were the results of the analysis?

Steven Beach: Just real simply, out of the 3 samples, there were 2 that contained a regulated asbestos.

Mr. Stephens: Okay. Now, were those samples composed of just asbestos?

Steven Beach: No, the laboratory -- actually these had several layers. The laboratory, for example, in field number one, they talked about each layer of the sample. Like for example, white paint and then there's a layer of asbestos, limestone, plaster, like another layer with a white gypsum plaster. It talked about some plant fiber. It talked about some brown vermiculite. There was some more asbestos with gray binder. It also had some brown cellulose insulation.

Mr. Stephens: Okay. Does this document say anything about who handled the samples?

Steven Beach: Yes. On the 2nd page of this it has a chain of custody. It shows that I had chain of custody of the sample from when I took the sample until I dropped it off at the laboratory.

Mr. Stephens: Okay. Does this document say anything about what method was used to evaluate the samples?

Steven Beach: Yes. The beginning of the report just talks about that it's a light microscopic -- they call it an optical microscopic heat test method.

Mr. Stephens: Okay. Once you received the results of the analysis, what did you do?

Steven Beach: From there, I got the results back that it did contain asbestos. Because A-1 is regulated by the Department of Air Quality, I made a copy of all my records and just forwarded them to the State.

Mr. Stephens: Okay. That's all we have for Mr. Beach.

Hearing officer: Okay. I have a question and maybe you can't answer it, but this Dixon Information Laboratory, they talk about an Optical Microscopy test method. According to the Utah Administrative Code, under the definitions part of R307801-3, asbestos containing material means any material containing more than 1% asbestos by the methods described (inaudible) -- using polarized light and optical microscopic -- I don't know how you say it -- PLM. And it says, "Or if the asbestos content is less than 10% the asbestos concentration must be determined by point counting using the PLM procedure." Do you have any information from Dixon about whether that point counting method was used?

Steven Beach: I have no knowledge of that. I just have the method that they used.

Hearing officer: Okay. It also states in this Exhibit C in the first paragraph about an appendix A that contains statements which an accredited laboratory must make to meet requirements of the crediting agency. This appendix A must be included as an essential part of the test report. That appendix A is not in this Exhibit and it wasn't in the material that was submitted as part of the administrative record.

Steven Beach: I guess I don't know what you're referring to.

Hearing officer: Do you have this Exhibit right here?

Steven Beach: Oh, are you talking about the laboratory results?

Hearing officer: Read the first paragraph.

Steven Beach: It says, "Samples A36770 through A36772 have been analyzed by a visual estimated based on EPA600-M482020, December 1982 optical microscopy test method. Appendix A contains the statements which an accredited laboratory must make to meet the requirements of the accrediting agencies." So is that what you are referring to?

Hearing officer: Keep reading. Those 2 sentences are the ones I'm trying to find out about.

Steven Beach: Okay. Also contains additional information about the method of the analysis. Appendix A must be included as a central part of this test report. This report may be reproduced, but all written reproduction must be in full unless a report is received from the laboratory for partial reproduction. The results of the analysis are as follows."

Hearing officer: Thank you. Now, my question is where's Appendix A?

Steven Beach: That is a good question. I don't know. Can I look in my original file? In the report, it shows page 2 of 2, but in my record, I never received appendix A, it appears.

Hearing officer: Okay. Well, in the preliminary studying, it establishes the validity of this sample and whether or not the methods required by Utah Code were followed where asbestos samples less than 10%, particularly whether a point count was done. I see no mention of that in this and I have no clue right now or no clearer understanding of what method it is. It does say, "Optical microscopy test method," which would suggest a polarized light microscopy, but it doesn't indicate whether the procedure followed the code. And so I'm trying to establish whether that was the case or not. And it may be a follow-up item to check back with the lab or something.

Mr. Stephens: Maybe I could ask this question. Are you aware -- Do you know one way or another whether appendix A was attached to the lab report when you received it back? At this point in time, can you be sure?

Steven Beach: I don't recall.

Hearing officer: Your expertise is not in sampling, correct?

Steven Beach: No.

Hearing officer: By that, I mean an analysis of samples.

Steven Beach: No. It's Dixon Information.

Hearing officer: One of the things that this report calls out is that the first sample, for example, contains 6 different types of material. Some contained asbestos, some did not. The question I would have is, how does one calculate the overall percentage of asbestos present in a sample when there are multiple components, different fractions, mass fractions that -- only 2 of which contained asbestos in a low concentration.

Steven Beach: The way I've learned in my training is that this is a regulated asbestos. You might have to -- You know, I'm not over the asbestos program. I'm just an asbestos inspector. The way it's been explained to me is anything over 1% is regulated asbestos.

Hearing officer: Is that of the whole sample or as part of the sample?

Steven Beach: As part of the sample.

Mr. Hernandez: I would disagree.

Mr. Nelson: Well, you'll have your chance to ...

Hearing officer: And I hope I'm not out of order by asking these questions. I'm just trying to understand what we have here. That's all the questions I have at this time on that. Okay. Matthew.

Mr. Hernandez: Hi, Mr. Beach. How are you today?

Steven Beach: Good.

Mr. Hernandez: Let's get on right now to the request for hearing. I don't know where it's at in the executive hearing.

Hearing officer: What we're doing now is asking questions of the witnesses. Christian is still presenting the Air Quality Division's information and we're not done with that yet.

Mr. Hernandez: Oh, Okay.

Hearing officer: So do you have any questions?

Mr. Hernandez: This was in the actual administrative record.

Mr. Nelson: But he wasn't asked about it.

Mr. Hernandez: Actually a part in there, it was. We asked for it to be point counted for accuracy in this request for hearing.

Mr. Nelson: Yeah, but you'll have your chance to present information and evidence. The purpose for you now is to clarify or ask any questions of him.

Mr. Stephens: Related to what's already been brought up.

Mr. Hernandez: Right here asbestos contained material in definitions, so. Will you read that for us?

Steven Beach: I don't have a copy, so.

Mr. Hernandez: It would be in number 9.

Hearing officer: Is that the one that I referred to here?

Mr. Stephens: Could you point us out to the exact spot where you are?

Mr. Hernandez: Asbestos containing material. It's about 2/3 of the way down.

Steven Beach: Could you give the exact quotation, like R307?

Mr. Hernandez: R307-801-3 definitions 1,2,3,4,5th definition down, "Asbestos containing material." Will you read it?

Steven Beach: Sure. "Asbestos containing material ACM means any material containing more than 1 percent asbestos by the method specified in appendix A subpart F, 40CFR part 763 section 1 polarized light microscopy PLM. If asbestos content is less than 10%, the asbestos concentration must be determined by point count using PLM procedure."

Mr. Hernandez: Is the percentages that you found less than 10%?

Steven Beach: Yes.

Mr. Hernandez: Did you request a point count?

Steven Beach: No, I did not.

Mr. Hernandez: Why did you not?

Steven Beach: Because 1% is still asbestos that's regulated that has to be disposed of correctly.

Mr. Hernandez: But it's part of the rule that you do that. Why did you not do that? You don't have to follow the rules at Salt Lake Valley Health Department for inspecting?

Hearing officer: I think the point of the questioning now is to establish the facts.

Mr. Hernandez: Oh, okay. I withdraw the question. Let's get back to 4.m, the sampling. The administrative record 4.m.

Hearing officer: Are these pictures the same as the --

Mr. Hernandez: Maybe it is actually 4.1, Dixon Information.

Hearing officer: For the record, is this the same as Exhibit C?

Mr. Stephens: Yes, that's correct.

Mr. Nelson: Can I make a recommendation? We're going to get very confused upon the record if we start referring to both tabs. I think we ought to be referring to the administrative record that has been submitted and just work off that.

Mr. Stephens: We thought it would be a little bit easier for the hearing officer if we gave them a subset, but that's fine, whatever works best.

Hearing officer: I agree with what Fred said. You can, for purposes of maintaining a continuity, refer to a tab here, but as you have done already, refer back over here. We will use the official reference to the administrative record. So you had a question on this same Exhibit?

Mr. Hernandez: Yes, I do. It says the sample contains 6 types in this material, right? The 6th type is a perlite and contained 2% asbestos in the gray binder. Is that not correct?

Steven Beach: That's what it says.

Mr. Hernandez: Okay. And then if you'll go down to the next paragraph, the 6th type is less than 1% of the sample? Is that correct?

Steven Beach: It says -- yes.

Mr. Hernandez: So the 2% that you would consider asbestos is less than 1% of the sample?

Steven Beach: Yes, that's what it says.

Mr. Hernandez: Then -- and any material with less than 1% asbestos is a non regulated material.

Steven Beach: What did you say again? Sorry.

Mr. Hernandez: Less than 1% of asbestos by definition is considered non regulated material.

Steven Beach: Well, depending on the sample, yes.

Mr. Hernandez: On any sample. If you turn in a sample and it's less than 1% --

Mr. Stephens: Objection. You need to be asking questions, not just testifying yourself.

Mr. Hernandez: If you turned in a sample less than 1% and it's less than 1%, is it asbestos?

Steven Beach: I don't know what you're saying by less than 1%. There's so many percentages, I don't know what you're saying.

Hearing officer: Kind of a point of order here. It's most helpful to me to be just establishing facts at this point, not drawing conclusions. In that same paragraph, you're referring to, it indicates that the second type of material did have 1.5% of asbestos and it constitutes 20%.

Mr. Hernandez: Yes, and if 20% of the material is 1/5 of the material and 1/5 of 1.5% --

Hearing officer: Right, and I understand the point. And the question, then -- which I'm not sure we have anybody in the room right now to answer the question, we may later when other people are interviewed -- but I'm not clear at this point on whether the weighted percentages are what are the defining criteria for a loose scrap sample of material found on the floor of an area. We need to figure that out later. In order to use our time efficiently, I'd like to keep moving ahead. Let the record show that there is some question about what constitutes a percentage criteria in a total sample. Mr. Beach indicated he thought it was any component in the material. We don't know yet. It will have to be determined. Is that all right?

Mr. Hernandez: Yes. We can go on.

(Background talking)

Mr. Hernandez: Did you call Greg Sorenson from the Division of Air Quality the same day that you did the inspection?

Steven Beach: Yes, I did.

Mr. Hernandez: Do you know why Greg didn't come out on the inspection?

Steven Beach: Yeah, he was busy on other inspections.

Mr. Hernandez: Okay. Let's head to the pictures. I do believe that it's 4.m. This would be picture number 7. Is that the blown-in insulation that you're describing?

Steven Beach: Yes.

Mr. Hernandez: And is it separate from the other bags that are on the side of it, the asbestos containing bags on picture number 5?

Steven Beach: Let's take a look here.

Mr. Hernandez: In two different locations?

Steven Beach: I don't know. To me they're all just thrown in there.

Mr. Hernandez: Well, you've taken one picture, number 7. Do you not only see blown insulation



bags and some decons and a vacuum?

Steven Beach: Yes. Yes, in picture 7, I see a lot of blown-in insulation and a vacuum.

Mr. Hernandez: Do you see any other bags other than the blown-in insulation?

Steven Beach: No.

Mr. Hernandez: Okay. Number 5 picture. Do you see any blown-in insulation bags in that picture?

Steven Beach: I guess I don't, no.

Mr. Hernandez: So would it be safe to say that these 2 -- that the insulation was not set at the same place as the asbestos bag?

Steven Beach: It's been a long time since I've taken these pictures. I don't know. I can't remember in relation where these pictures are taken.

Mr. Hernandez: Moving onto -- you said that you had talked to a couple of people when you first arrived.

Steven Beach: Yes.

Mr. Hernandez: Was I not there?

Steven Beach: No, you were not.

Mr. Hernandez: Can you tell me who you talked to?

Steven Beach: They didn't identify themselves.

Mr. Hernandez: Did they say who they worked for?

Steven Beach: Yes. They said A-1.

Mr. Hernandez: A-1?

Steven Beach: Yes.

Mr. Hernandez: Okay. Moving on. You said you pulled 3 samples?

Steven Beach: Yes.

Mr. Hernandez: Can you describe the bag that you put the samples in?

Steven Beach: Yeah. Do you mean when I took the sample? Yeah, it was a Ziploc bag.

In fact, you were present when I took one sample.

Mr. Hernandez: Yes, I was, one of the samples I was.

Steven Beach: The one that you were present at, I had a small Ziploc bag. I just went to the ground and picked it up, a grab sample, put it in the bag and closed it.

Mr. Hernandez: So bag, a quart bag, gallon bag?

Steven Beach: Oh, sorry. So what size you're asking?

Mr. Hernandez: Yeah, what size of a bag was it?

Steven Beach: Since it was a grab sample it was just a little tiny quart bag.

Mr. Hernandez: You grabbed a handful of material?

Steven Beach: No, I did not.

Mr. Hernandez: How much material did you put in each bag?

Steven Beach: Like I said, I used my fingers, picked it up and put it in the bag. In fact, the sample you're trying to give me was the exact same size as I took.

Mr. Hernandez: Okay. These people don't know how big that was. I'm trying to ..

Mr. Stephens: I think he's described that he picked it up with his 3 fingers.

Steven Beach: I picked it up, yeah.

Hearing officer: Along that line, a point of clarification, was that sample taken from any bag or was it loose material on the property?

Steven Beach: It was just on the ground. Two samples were outside the door and then one sample was inside the door.

Hearing officer: Okay. But it was loose material not contained in bags?

Steven Beach: Yes. It was just loose on the ground.

Hearing officer: Carry on.

Mr. Hernandez: Did you take any samples from inside the trailer?

Steven Beach: No, I did not.

Mr. Hernandez: Can you tell me why?

Steven Beach: Because you and your employees said it came from a job that's regulated by the State and I figured the State is in charge of that job.

Mr. Hernandez: When did we say it was from a job regulated by the State?

Steven Beach: You faxed me over the job from the Arbor Commercial Project. You explained to me that it was some blown-in insulation and that you bagged it up and that you were

going to put it in the trailer and take it to the landfill.

Mr. Hernandez: That's it for this witness.

Hearing officer: Anything else, Christian?

Mr. Stephens: Nope, that's it.

Hearing officer: Thank you, Steve. Do you need Steve to stick around?

Mr. Stephens: Probably would be a good idea just in case we need to recall him.

Hearing officer: If you could go join the waiting area, and I'd request that you not discuss what you have covered here during the time that you're waiting there.

Steven Beach: Okay.

(Background talking and noises)

Hearing officer: Christian, where do you want to go from here? Did you have other ...

Mr. Stephens: We have 2 other witnesses.

Hearing officer: Okay. Who's coming in now?

Mr. Stephens: Greg Sorenson will be coming in next.

Hearing officer: And then?

Mr. Stephens: And then Bob Ford.

Hearing officer: Okay, thank you.

(Background talking about microphone problem)

Hearing officer: Thank you. Hopefully that's better.

Recorder: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Greg Sorenson: Yes.

Mr. Stephens: Thank you.

Hearing officer: Christian, perhaps you normally go through and ask them their question and so on. Please go ahead and interview your witness.

Mr. Stephens: Okay. Thank you. Will you please state your name?

Greg Sorenson: Greg Sorenson.

Mr. Stephens: Where are you employed?

Greg Sorenson: The Utah Division of Air Quality.

Mr. Stephens: How long have you been with the Division of Air Quality?

Greg Sorenson: About 10 years.

Mr. Stephens: Okay. What is your current position?

Greg Sorenson: I'm currently the small business environmental assistant.

Mr. Stephens: Okay. How long have you held that position?

Greg Sorenson: About 1 year.

Mr. Stephens: Okay. What was your previous position?

Greg Sorenson: I was a compliance inspector inspecting the hazardous air pollutant section.

Mr. Stephens: In that capacity did you conduct asbestos inspections?

Greg Sorenson: Yes, I did.

Mr. Stephens: Okay. Approximately how many asbestos demolition/renovation inspections have you performed?

Greg Sorenson: 150 or more.

Side 2

Mr. Stephens: Are you familiar with A-1 Restoration?

Greg Sorenson: Yes, I am.

Mr. Stephens: Okay. What is the Division of Air Quality's regulatory responsibility for A-1?

Greg Sorenson: Certify A-1 and conduct oversight for their asbestos activities.

Mr. Stephens: Okay. I have here-- this is in the administrative record document 7. Can you please tell us what -- are you familiar with this document?

Greg Sorenson: Yes.

Mr. Stephens: Could you tell us what it is, please?

Greg Sorenson: This is the certification application for an asbestos company for A-1 Restoration Inc.

Mr. Stephens: Okay. Now, based on this certification application, what activities did A-1 request certification to perform for the year 2005?

Greg Sorenson: Abatement removal, inspections and project designs.

Mr. Stephens: Okay. Have you conducted inspections that have involved A-1 Restoration?

Greg Sorenson: Yes.

Mr. Stephens: Okay. Do you record your inspections?

Greg Sorenson: Yes.

Mr. Stephens: Okay. Did you conduct an inspection for A-1 Restoration on August 3, 2005?

Greg Sorenson: Yes, I did.

Mr. Stephens: Okay. Where did that inspection take place?

Greg Sorenson: It occurred at Pheasant Hollow Business Park.

Mr. Stephens: Okay. What type of activity were you inspecting?

Greg Sorenson: I was inspecting first off the clean-up from a previous complaint. I was inspecting A-1's activities at the site.

Mr. Stephens: Okay. What exactly was A-1 doing there when you arrived?

Greg Sorenson: A-1 was abating the ceiling material in the upstairs.

Mr. Stephens: Okay. Did you record that inspection?

Greg Sorenson: Yes, I did.

Mr. Stephens: What manner did you record it?

Greg Sorenson: I wrote a memo and also videotaped various activities there.

Mr. Stephens: Is one of these videotapes, does it contain the things that you video recorded?

Greg Sorenson: Yes.

Mr. Stephens: Okay. Did you observe the disposal of materials from the job?

Greg Sorenson: I observed some of the handling activities, but no, not specifically.

Mr. Stephens: Okay. Let's see. How much of each material, that is ceiling and insulation, did you see?

Greg Sorenson: Based on my previous visit to the site and the amount of project they were conducting, there was a couple of thousand square feet of ceiling materials, as much as 4 cubic yards of ceiling material, the spray-on or ceiling substraight that the material was attached to, additional contaminated materials and insulation. It was more than 10 cubic yards.

Mr. Stephens: Can you show us on one of these video tapes what you're referring to?

Greg Sorenson: Yes. I can show on the 2 Pheasant Hollow inspections, I can show the materials as they were before A-1 got there, as they were in relation to the first complaint. And then the activities, I can show the materials in one segment of the second tape.

Mr. Stephens: I was going to ask him to show that these 3 tapes have been put onto one tape that I submitted to everybody who had copies of the administrative record. So would you please show for the hearing officer?

Greg Sorenson: Yes.

Mr. Stephens: Thank you.

Mr. Hernandez: I don't believe I got the actual tape.

Mr. Stephens: It was in the box that I sent you.

Mr. Hernandez: Yeah, I did get that tape, but I didn't get -- the first inspection's not on it that he did with the ...

Mr. Stephens: There were 3 tapes that were put onto the videotape.

Greg Sorenson: They should all be there.

Hearing officer: There were 3 different segments.

Mr. Hernandez: I thought I went through them all and I'm not sure. Anyway.

Hearing officer: There was some blank between them. I had to fast forward through to some dead spots in order to see them, but there were 3 distinct, separate sections.

Mr. Hernandez: And I seen the one on the shop and the one on when we were actually at Pheasant Hollow, but I didn't have privy to see the one that Greg did before A-1 that was at Pheasant Hollow and I guess we're going to see that now. I have no objection because we weren't there, you know, this was prior to A-1. So I'd like to see it.

Mr. Stephens: Let's just get that in the right place. And Greg, it would be helpful if you narrate what it is we're seeing here so we have some context for what you're showing us.

Greg Sorenson: Okay. Right here you're seeing the beginning of my tape where I've indicated that it's the Pheasant Hollow Business Park and I'm trying to get the address coordinates.

Hearing officer: You have sound with this, don't you?

Greg Sorenson: Yes. This is a garage structure that was out. What I'm doing here is I'm basically going through the house, and the longer I'm there, the quicker I get at going through. I'm identifying different building materials that are suspect that should be included in an asbestos pre-demolition inspection report. You're looking at the walls where they've been damaged. You see the carpet has debris all over it, and I believe I'm going upstairs right now and you see -- I'm showing asbestos acoustical spray that's down underneath -- or that's been blown up into the electrical fixture box. I'm showing the types of ceilings that are in the building. That was, I believe, in the master bedroom in the back. It was more of a cementous-type texture, as I remember. This is in the basement now, I believe. And in a minute here, you're going to see where they have actually put a sheet rock layer over the textured material so you have as much as an inch of ceiling material that has to be removed -- that's potentially removed. You're seeing the carpets where they've cut through the ceiling and there's materials that are on the floor. There's a section right here that's been torn off the ceiling. You see that it's actually a plaster ceiling. It's a fairly thick ceiling with heating coils in it, and another room where they've taken out part of the ceiling in their training activities, and then the carpet and everything that's contaminated down on the floor.

Hearing officer: Could you pause the tape for just a moment?

Mr. Stephens: Yes.

Hearing officer: The tape audio track indicated samples were taken?

Greg Sorenson: Yes.

Hearing officer: You took those samples?

Greg Sorenson: Yes. This was a part of a complaint. A municipal organization had gone in and done training in the building, cut holes in the walls and the ceiling during that training and disturbed the materials, and so I'm basically collecting information as to whether this material would be a regulated material. And my samples become the primary inspection report for the project.

Hearing officer: Okay, thank you.

Mr. Stephens: Proceed?

Hearing officer: Yes.

Greg Sorenson: This is just -- it ends right here. I'm basically just in the garage showing the materials in the garage and the soffit, which all were tested and found to be non-asbestos. And so that is that inspection tape. I believe that is the third one on your tape. This is the inspection tape from the day that I returned to the facility to verify clean-up.

Mr. Stephens: Now, what are we looking at here, Greg?

Greg Sorenson: Okay. I was going to pause it. I need to reverse back so you can get a good look at it. There's only a short piece of the tape. Okay. We're to here of the negative air machine, so they're in process of abating and cleaning up the facility. What you see is the insulation that came down. They took the ceiling off. Again, it was the plaster type stuff so it was easier to take the ceiling off.

Mr. Hernandez: I can't see anything in there hardly. What are you talking about?

Greg Sorenson: Okay. Come on up to the screen. And you're getting a little bit of haze off the screen, but if you see back in the back, you can see the insulation that was piled.

Hearing officer: If you take the tape forward just a tiny bit I think there's a little clearer view.

Mr. Stephens: Play and then pause real quick. You can see it.

Hearing officer: Right there.

Mr. Hernandez: I can see it.

Greg Sorenson: Okay. Yeah, that's the better picture. There was a corner here that was deeper than what you're seeing here so that they pushed it off into a corner. And so basically through the window, seeing that they'd that they'd torn off the ceiling, this material was mixed in with the fragments from the ceiling and indicated that this would be asbestos containing waste material and so again, that's ...

Hearing officer: So before you start the tape up again, help me get context here. Now, this is time-dated August 3, 2005?

Greg Sorenson: Yes.

Hearing officer: You were at the Pheasant Hollow property?

Greg Sorenson: Yes.

Hearing officer: And you were inspecting for what purpose?

Greg Sorenson: I was there to verify that the project had been cleaned up. I wasn't -- one of my purposes was not arriving at the site to inspect A-1. I went to the site to make sure that the training demolition had been taken care of and that the house was ready for demolition, is what I was trying to do. A-1 had run into some problems in relation to the ceiling coming down and not being, as I remember, plastic. They were expecting plastic to be up there to hold the insulation in place and so that had slowed them down and they'd actually extended the project, which allowed me to get a view of the abatement for the upstairs.

Hearing officer: Had you been notified at this point of the questions related to the warehouse?

Greg Sorenson: No, I don't believe I have. This was August 3rd and it was before -- I don't believe it was ...

Mr. Stephens: August 18th was the date of Steve Beach's inspection.

Hearing officer: Okay. So now you arrived on site. Could you describe for a moment what you did when you first came? And then when did you start filming?

Greg Sorenson: On this date I started filming fairly quickly because they'd had some power issues and issues with the negative air machines and they weren't running at the time. So I'm just right out there. I start filming and I walked around the house. I spent a lot of time walking around the house and just kind of assessing where things were at, letting them take care of the problems that they were having with the negative airs, and there was also -- and actually as I remember with the containment, where the house had pressurized and blown off one of the cells or the plastic critical barriers. And they just resealed that and they were just getting on. I evaluated their equipment, what they had their negative pressure monitoring device -- Again, just looking at their work practice, what was going on and that they were doing the best they could do in relation to the rules.

Hearing officer: Where were the contractor's personnel at this point?

Greg Sorenson: When I initially arrived, they were all outside. About this point they are inside the building. They have been working on the negative air and they're basically getting ready to go back into clean up operations.

Hearing officer: Thank you.

Mr. Hernandez: Did A-1 go anywhere to get more neg air?

Mr. Stephens: I'm not finished with asking him questions, so. You'll have an opportunity to cross-examine if you wish. Is there anything else, Greg, on this particular scene?

Greg Sorenson: There's nothing else on ...

Mr. Hernandez: Could we see the whole video? I mean you're just showing us a little tiny clip of it. Is there a reason why we're not seeing the whole thing?

Mr. Stephens: Yes, because it deals with the specific questions I've been asking him.

Mr. Hernandez: Oh, Okay.

Mr. Stephens: So everybody has a copy of the tape. If you want to play the whole tape, when you have your turn, you'll be free to do that. Actually, Greg, will you get on, because we're going to be looking at another tape here in a few minutes, so.

(Background talking)

Mr. Stephens: Thank you. Now, Greg, I'm just going to carry on with a few questions here. On the job that you went to where you saw this, what sort of materials would have to be disposed of?

Greg Sorenson: The carpet in the basement, the sheet rock pieces that fell, any materials scraped off the substraight that contained asbestos. In some cases, they can just scrape off the upper layer and dispose of that or scrape down to the sheet rock, but in this case, part of the video shows that they took the ceiling out of the basement. Then the insulation would need to be disposed of because it was co-mingled with the regulated material and had become asbestos containing waste.

Mr. Stephens: Now, this is document 9 in the administrative record. Are you familiar with this document, Greg?

Greg Sorenson: Yes, I am.

Mr. Stephens: What is it?

Greg Sorenson: This is Utah Administrative Code R307-801, the Utah asbestos regulations.

Mr. Stephens: Okay. Does it define asbestos waste?

Greg Sorenson: It does.

Mr. Stephens: Okay. Did you read the definition of asbestos?

Hearing Officer: Hold on, where are we at?

Mr. Stephens: Document 9.

Hearing Officer: R307-801-3 definitions and I believe it's asbestos waste on page 3 of 14.

Mr. Stephens: Okay. Will you please read that?

Greg Sorenson: "Asbestos waste means any waste that contains asbestos. This term includes filters from control devices, viable asbestos containing waste material and bags or other similar packaging contaminated with asbestos as applied to demolition and renovation. This term includes materials contaminated with asbestos including disposable equipment and clothing.

Mr. Stephens: Okay. Now, in your opinion, would the insulation that we just saw be considered asbestos waste?

Greg Sorenson: Yes.

Mr. Stephens: Why?

Greg Sorenson: It had been contaminated with the debris from the asbestos containing ceiling.

Mr. Stephens: Okay. Now, does this rule say anything about how asbestos waste must be disposed of?

Greg Sorenson: Yes, it does.

Mr. Stephens: Okay. Could you please indicate where it says that and read it for us?

Greg Sorenson: It's R307-801-15, which I believe it's 15, yes 15, it's on page 13 of 14.

Mr. Stephens: Okay. Could you please read for us -- You indicated it does say how asbestos waste must be disposed of. Can you please indicate for us where that's contained and read it for us?

Greg Sorenson: Yes. In R307-801-15, it indicates in paragraph 4 that "Containerized RACM shall be disposed of at a landfill which complies with 40CFR61.150.

Mr. Stephens: Okay. And you say that you use an acronym there, RACM, what does that mean?

Greg Sorenson: That is regulated asbestos containing material.

Mr. Stephens: Now, let's see. Did you do any other inspections for A-1 in August of 2005?

Greg Sorenson: Yes.

Mr. Stephens: Okay. Where was that? Did you do just one other?

Greg Sorenson: No, I think I did at least 2 others.

Mr. Stephens: Did you do an inspection of their warehouse?

Greg Sorenson: Yes, I did.

Mr. Stephens: The same one that Steve Beach had inspected?

Greg Sorenson: Yes, I did.

Mr. Stephens: Okay. This is document 4 in the administrative record. Are you familiar with this document?

Greg Sorenson: Yes.

Mr. Stephens: What is it?

Greg Sorenson: This is a memorandum of my inspection at the A-1 warehouse. The inspection date is August 26, 2005. It also includes my evaluation of Steve Beach's findings.

Mr. Hernandez: What number is that again?

Mr. Stephens: It's document number 4.

Greg Sorenson: DAQH-864-05.

Mr. Stephens: What prompted you to conduct that inspection?

Greg Sorenson: Steve Beach, on the 18th, had contacted me and had given me some information about that and I needed to follow up to close out his inspection.

Mr. Stephens: Okay. What specifically did he tell you?

Greg Sorenson: He indicated that materials were being -- there were suspect materials and he actually asked me how to do sampling and stuff like that.

Mr. Stephens: Okay. What did you do in response?

Greg Sorenson: I sent an e-mail out to the division ... the Hazard Air Pollutant section, my fellow inspectors, so they could follow up if they got any other calls.

Mr. Stephens: Okay. All right. This is document 4.d in the administrative record. Is this a copy of that e-mail?

Greg Sorenson: Yes, it is.

Mr. Stephens: Okay. So what specifically did you say in that e-mail?

Greg Sorenson: There's an e-mail at 2:19 p.m. I indicated that Steve Beach had called, that they'd received the hazardous material complaint that turned out to be asbestos or suspect asbestos at this point. It was reported that the attendant of unit B6 was tearing open bags and placing the contents in the trailer and that the warehouse was filled with bags.

Mr. Stephens: Now, did Mr. Beach do anything other than call you to notify you?

Greg Sorenson: Yes.

Mr. Stephens: Okay. What else did he do?

Greg Sorenson: He followed up with the results from the asbestos inspection. He faxed me a copy of a pre-demolition inspection report and kept me up to date and then gave me his final report.

Mr. Stephens: When you first heard from Steve Beach, based on what you knew to that point, where did you understand the material that Steve Beach saw and sampled to have come from?

Greg Sorenson: Steve Beach reported to me that they'd reported to him that it had come from an Arbor Commercial project out in the south end of the valley.

Mr. Stephens: Had DAQ received an asbestos notification for that Arbor demolition?

Greg Sorenson: Yes, they had.

Mr. Stephens: Okay. Now, are you aware of A-1 having done an asbestos inspection prior to the Arbor renovation?

Greg Sorenson: It was a demolition notification and A-1 was listed, as I remember, as the asbestos inspection.

Mr. Stephens: Okay. So an asbestos inspection was listed as having been performed?

Greg Sorenson: Yes.

Mr. Stephens: Okay. And what were the results of that inspection?

Greg Sorenson: I reviewed the inspection and it indicated that no asbestos had been found during inspection.

Mr. Stephens: Okay. So then based on information you received in your conversations with Mr. Beach, did you take any further action?

Greg Sorenson: Yes.

Mr. Stephens: What did you do?

Greg Sorenson: I reviewed the notification of the inspection and conducted a follow up inspection.

Mr. Stephens: So what was the purpose of your inspection itself when you went out there?

Greg Sorenson: The purpose of my inspection was to ensure that the materials that Steve Beach had identified had been cleaned up.

Mr. Stephens: Okay. So when you arrived at A-1's warehouse, was anyone from A-1 Restoration present?

Greg Sorenson: Yes.

Mr. Stephens: Okay. Who was there?

Greg Sorenson: Matt Hernandez and a couple of his employees.

Mr. Stephens: Okay. Did you speak to anyone?

Greg Sorenson: I did.

Mr. Stephens: Who did you speak with?

Greg Sorenson: I spoke with Matt Hernandez.

Mr. Stephens: Okay. What did you do while you were there?

Greg Sorenson: I evaluated the outside of the building for contamination, requested entry into the building to conduct an inspection. And then after doing that initial inspection, went out, got my camera and went back in.

Mr. Stephens: So you did enter the building?

Greg Sorenson: Yes.

Mr. Stephens: Okay. And what did you see while you were there?

Greg Sorenson: I saw a pile of asbestos waste bags.

Mr. Stephens: Okay. Did you see anything resembling what Steve Beach had described to you?

Greg Sorenson: No, I did not.

Mr. Stephens: Okay. Could you tell where the bags of materials that you saw came from?

Greg Sorenson: No.

Mr. Stephens: Okay. Why not?

Greg Sorenson: They did not have asbestos generator labels on them.

Mr. Stephens: Okay. Did A-1 tell you where the bags had come from?

Greg Sorenson: Yes.

Mr. Stephens: Where did they say they came from?

Greg Sorenson: They indicated they came from an asbestos renovation in Draper.

Mr. Stephens: Okay. Did you see anything else of concern?

Greg Sorenson: One of the bags in the waste pile contained a significant amount of water and that bag was leaking onto the cement.

Mr. Stephens: Okay. Let's return back to the rule that was document 9 in the administrative record. Does this rule say anything about when bags must be labeled?

Greg Sorenson: Yes. If we return to R307-801-15, paragraph 3 indicates how they need to be labeled and when.

Mr. Stephens: Could you please read it for us?

Greg Sorenson: Yes. "Containers shall be labeled with the waste generator's name, address and phone number and the contractor's name and address before they are removed from the work area."

Mr. Stephens: Okay. Are there any other rules that require labeling of bags prior to leaving the job site?

Greg Sorenson: Yes.

Mr. Stephens: Could you please tell us what another one is?

Greg Sorenson: The federal rules in 40CFR61 subpart M paragraph 150 gives additional labeling and disposal requirements.

Mr. Stephens: Okay.

Hearing officer: Is that part of what you've included here?

Greg Sorenson: It is not.

Mr. Hernandez: It is not part of this administrative --

Mr. Stephens: Oh wait. I'm sorry. Yes it is. Actually it is. It's the next one after document 9, it should be document 10.

Mr. Hernandez: So we should be able to identify that, right?

Mr. Stephens: Yes. Can you tell us where it's located in here?

Greg Sorenson: Okay. If we go to section 150 -- And again, we're talking about when the bags have to be labeled.

Mr. Hernandez: We're in the federal rule now?

Mr. Stephens: Yes.

Greg Sorenson: 61.151. This is a little bit harder to follow the outline. On (a)(1), page 18, (a)(1) roman numeral "iv" starts talking about the OSHA labeling.

Mr. Hernandez: This is an OSHA thing and not a Division of Air Quality?

Greg Sorenson: No, it's R307 -- It's 40 CFR 61.150, it's on page 18 of the attachment. And in the left-hand column, it starts off with (a)(1). At iv, which is right about where the center perforation is, they start talking about labeling of the bags. That's the asbestos warning label information. And then in paragraph v: "For asbestos containing waste material to be transported off the facility site, labeled containers or wrapped materials with the name of the waste generator and the location at which the waste was generated."

Mr. Stephens: Okay. Does the state rule say anything -- Well, let me ask this. Why does it matter where the materials come from?

Greg Sorenson: It determines which regulations apply.

Mr. Stephens: Okay. Does this rule, does the state rule, say anything about how asbestos waste should be containerized?

Greg Sorenson: Yes, it does.

Mr. Stephens: Could you please indicate that for us? That's back to the state rule, which would be document number 9.

Greg Sorenson: R307-801-15 -- This is how it should be labeled?



Mr. Stephens: My question is, does it say anything about how it should be containerized or should it be containerized.

Greg Sorenson: In 15(2): "Asbestos waste containers shall be leak tight and strong enough to hold contents securely."

Mr. Hernandez: That's number 2, right?

Greg Sorenson: Yes.

Mr. Stephens: So you said you recorded what you found and saw when you were there?

Greg Sorenson: Yes.

Mr. Stephens: Let's go back to Exhibit E, which is document 11 in the administrative record. This is a video of the warehouse. Will you please indicate for the hearing officer what you recorded there?

Greg Sorenson: This is after I'd gone in the first time, and I went out, again, following my procedure. I'm trying to document where I'm taking the asbestos, or the inspection video, from. We're now in the building and we're looking at the bags.

Hearing officer: Could you pause the tape for just a moment please? Now, let me understand. This is at the warehouse on 3rd West and 34th South roughly?

Greg Sorenson: Yes.

Hearing officer: This is not the waste generator site?

Greg Sorenson: This is not the waste generator site. This is a warehouse that A-1 is using for temporary storage.

Hearing officer: When you arrived, were labels on these bags?

Greg Sorenson: No, they were not.

Hearing officer: Okay.

(Tape playing)

Mr. Stephens: Okay. And that's it. Thank you, Greg. Okay. Mr. Sorenson, when you were there during the inspection did you speak to anyone other than Mr. Hernandez?

Greg Sorenson: Not from A-1 Environmental.

Mr. Stephens: Okay. Did you have any further discussions with Mr. Hernandez after that point right there?

Greg Sorenson: Yes.

Mr. Stephens: Okay. What was the subject of your discussion, or what did you discuss?

Greg Sorenson: I discussed my findings and completed an inspection notice.

Mr. Stephens: This is document 4.b in the administrative record. Are you familiar with this document?

Greg Sorenson: This is the inspection notice I completed August 26, 2005, at the A-1 warehouse.

Mr. Stephens: Are these the findings that you reviewed with Mr. Hernandez?

Greg Sorenson: Yes, they are.

Mr. Stephens: Okay. What specifically, then, were the findings that you reviewed with him?

Greg Sorenson: I indicated that they'd failed to label the asbestos containing waste bags before leaving the project site and I indicated that the bags in the warehouse had been labeled during the inspection.

Mr. Stephens: Okay. Now, once you had left the site, did you take any subsequent steps to ascertain the origin of the materials you saw?

Greg Sorenson: Yes.

Mr. Stephens: Okay. What steps did you take?

Greg Sorenson: While on site, I'd requested some waste manifests for the projects that I'd become familiar with either through inspection or complaints and I reviewed those and reviewed the findings.

Mr. Stephens: Okay. Did you receive copies of the manifests that you requested?

Greg Sorenson: Yes, I did.

Mr. Stephens: Okay. And did you receive a weigh shipment record from A-1 for the Pheasant Hollow Business Park abatement?

Greg Sorenson: Yes I did.

Mr. Stephens: Okay. This is document 4.h in the administrative record. Are you familiar with this document?

Greg Sorenson: Yes, I am.

Mr. Stephens: Okay. And could you please tell us what it is?

Greg Sorenson: This is an asbestos waste manifest for a residence demolition at 454 West 1000 South, also known as Pheasant Hollow Business Park.

Mr. Stephens: Okay. Based on -- this is a broader question. Based on your observation of the abatement compared with the weigh shipment record here, was all the waste material that you observed there disposed of properly?

Greg Sorenson: It did not appear so.

Mr. Stephens: And why not?

Greg Sorenson: Six yards of material was disposed here. I was expecting 10 to 30 yards of insulation material depending on how well they'd compressed it. There was also the carpet and the sheet rock that they'd pulled down off the ceiling.

Mr. Stephens: Okay. So then based on the information that was submitted and is now in the administrative record, what is your opinion as to where the materials that Steve Beach saw and sampled came from?

Greg Sorenson: Based upon my evaluation of his inspection report, these findings, the asbestos samples that Steve Beach took, my evaluation of A-1's -- of the inspection report where A-1 reported they'd come from, and a very cursory look at other projects that they may have done, I believe that the insulation waste that Steve Beach saw came from Pheasant Hollow Business Park.

Mr. Stephens: Okay. And what about the unlabeled bags and the leaking bag that you saw the day you were there? Where do you believe that came from?

Greg Sorenson: The leaking bag that I saw on the day, I believe, came from the Draper renovation project that Matt reported it had come from.

Mr. Stephens: Okay. And about the unlabeled bags.

Greg Sorenson: And the unlabeled bags there also, I believe, came from that business park.

Mr. Stephens: Now, returning back to this last document here, does it contain the waste generator's phone number?

Greg Sorenson: If we go up to the top section on generator, going down it has the name and the address for the project, the zip code. It has the generator's name as Pheasant Hollow Business Park and address and zip, but it does not have a phone number.

Mr. Stephens: That's all we have for him.

Hearing officer: A quick question on this asbestos compliance manifest that we're looking at now on Exhibit 4.h. Is the generator's phone number required to be on this particular piece of paper?

Greg Sorenson: Yes.

Hearing officer: Why isn't there a block for it?

Greg Sorenson: On the form that's provided in the federal regulation, there is a block. The State of Utah has not generated the manifest. These, basically, are things that they can buy and it just happened that the format that A-1 was using did not have a block for a phone number.

Hearing officer: So this is a document generated, or obtained -- let me put it that way -- from A-1?

Greg Sorenson: This is a document that I obtained from A-1, yes.

Hearing officer: Thank you. You mentioned earlier that you had concluded that the bags that were in the warehouse were from the Pheasant Hollow Project?

Greg Sorenson: Yes.

Hearing officer: Could you explain again how you came to that conclusion?

Greg Sorenson: It's the nature of the materials I found. First off, one of the components was perlite. It's a component of ceiling texture. There was also plaster, both things which were readily available at Pheasant Hollow. On the other hand, the Arbor Commercial project didn't have any asbestos materials. It didn't have any plasters. It didn't have any textures or any materials that contained, or would have contained, those materials.

Hearing officer: What type of materials were at the Arbor project?

Greg Sorenson: As I remember, sheet rock. Can I look at the Arbor inspection? I don't remember specifically.

Mr. Stephens: Is it part of your inspection report, or ...

Greg Sorenson: Yes, it's part of the inspection report.

Mr. Stephens: That would be document 4, I believe. Yes, document 4 in the administrative record.

Greg Sorenson: And it's actually an enclosure to the list on the front, so it's an enclosure to it and I believe it's in 4.e, the fax from the Salt Lake County Health Department. Yes, 4.f.1 and 4.f.2 contain that inspection report. They have the attic insulation which shows percent asbestos. Do you see where I'm at?

Hearing officer: Under 4.f.1, I'm looking at a document handwritten at the top, to Steve Beach from A-1 Restoration dated July 18, 2005?

Mr. Stephens: Maybe describe what this is first, Greg.

Greg Sorenson: This is A-1's pre-demolition inspection report for Arbor Commercial at 45 West 10000 South.

Hearing officer: Okay.

Greg Sorenson: And actually it shows the reference for -- The inspection is actually 11688 South 3600 West, South Jordan. And you might be familiar with that as the District, currently. This is their -- they've sent a letter to Chris at your request on July 14, 2005. A-1 Restoration visited the site location listed above for the purpose of a visit. It was to identify any suspect asbestos containing building materials that may be disturbed during the demolition. The property is a residence of brick built with asphalt shingles of the roof. The property was heated by a new forced-air furnace. There were 5 suspect materials. 2 were assumed and 3 were sent to the lab for analysis.

Hearing officer: Excuse me. But could you tell me what it means when it says "assumed," or what do you understand that to mean?

Greg Sorenson: When they say that they're assumed they're under the NESHAP, the asbestos NESHAP. There are 2 categories of asbestos, friable and non-friable. The friable categories are additionally divided into 2 categories, category A and B. Category A tends to be asbestos mixed with cement, or cement is used as the binder. Those materials have to be removed from the structure and so they tend to be analyzed. And if floor tile is included in that -- some types of floor tile are included in A and some are in the other category, which is roofing materials, your asphalt-containing materials, which are less likely to have the asbestos released during a demolition. They only have to be removed if you're going to burn the house like for a fire training. So when they assume them they're basically taking these materials, asphalt floor tile, asphalt shingles, asphalt tar paper, and assuming that it contains asbestos because it can remain in the demolition debris and go to a demolition landfill.

Hearing officer: So they are asbestos containing, but not friable?

Greg Sorenson: They're asbestos containing, but not considered friable.

Hearing officer: So do they have to be treated as asbestos containing material?

Greg Sorenson: No.

Hearing officer: So what does this report tell me, then?

Greg Sorenson: This report tells you that you have asphalt roofing assumed, that you have flooring assumed, that some tar containing materials, but you have sheet rock, which is an undetected, and 3 types of surface coating in the hall, living room and kitchen, which are an undetect, which are the plaster-type materials on the sheet rock that I was looking at and looking for.

Hearing officer: So at the highest level, then, there was no asbestos removal required on this site?

Greg Sorenson: There was no asbestos removal required.

Hearing officer: Okay. Thank you. And that's the Arbor site?

Greg Sorenson: This is the Arbor site. Going back to the question, which is, how did I make that determination? More specifically, again, I look at that and I asked Mr. Hernandez -- you know, given this, I don't see the asbestos, where the asbestos that Steve Beach found. And in the absence of anything else, I compared it to the materials that I'd seen and recognized that it appeared to have come from that type of an asbestos ceiling scrape.

Hearing officer: So you visually noticed or identified material in the warehouse that appeared similar to the material --

Greg Sorenson: From Steve Beach's photographs of the warehouse, the bags, yeah. The

materials appeared similar to what I'd seen at the Pheasant Hollow Business Park.

Mr. Stephens: When you made that ultimate conclusion, did you have the lab reports from Dixon as well?

Greg Sorenson: Yeah, I had the Dixon Lab Reports. I had the photographs.

Mr. Hernandez: Did you have everything in here --

Mr. Stephens: You'll have your turn.

Hearing officer: Did you do an audit or reconciliation of the various manifests to account for where the bags went from these different projects?

Greg Sorenson: I looked at the manifests. I didn't look at the manifest for Draper. I looked at the 2 manifests that were related to complaints. One was from a Saint George project where A-1 had scraped a ceiling, maybe removed part of the ceiling again and was involving vermiculite, and the complainant was concerned about the vermiculite. That's why I requested the Saint George manifest. In the NOV, it's actually recorded a little bit differently, but it's the Saint George manifest. And then the Pheasant Hollow, to look at how much material had been disposed, I was most concerned with the Pheasant Hollow to see if Pheasant Hollows is -- and this is the basis of my finding. The Pheasant Hollow recorded 6 cubic yards of material disposed, and I was expecting 10-30 cubic yards.

Hearing officer: Okay. I don't have any other questions right now.

Mr. Stephens: That's it for us as well.

Recorder: Your Honor, could we take just a brief break while I change the tape?

Hearing officer: Yes. Let's take a 5 minute recess for a comfort call as well as for you to change the tape.

End of Tape

#2 State of Utah Air Quality vs. A-1 Restoration

1-10-07

10:37 a.m. - 12:00 noon

Side 1

Hearing officer: Okay. Let's conclude our recess if everyone's amenable to going ahead. Is the sound level okay for you?

Recorder: Yes.

Hearing officer: Okay. Let's proceed, Chris.

Mr. Stephens: I have no other questions for Mr. Sorenson.

Hearing officer: Okay. Matt.

Mr. Hernandez: Thank you. Hello, Mr. Greg Sorenson, how are you today?

Greg Sorenson: Doing okay.

Mr. Hernandez: Okay. Let's start out with -- it would be 4.b, inspection notice. Can you read -- and I guess it would be the 3rd part. "Inspection has revealed the probable violations of the administrative rule or EPA regulations."

Greg Sorenson: "Failure to label asbestos containing waste bags before leaving a project site -- bags in warehouse were labeled with a note underneath. They were labeled during the inspection."

Mr. Hernandez: Okay. I notice that there's no water issues, nothing written up on the water, a leaking bag of water or anything written on this form. Is there a reason why?

Greg Sorenson: I was in a hurry to leave the project.

Mr. Hernandez: Why were you in a hurry to leave the project?

Greg Sorenson: I had another inspection to verify, another place to visit.

Mr. Hernandez: Isn't it your duties and responsibilities as a DAQ regulator to do a thorough investigation no matter what's pending?

Greg Sorenson: Our inspections are focused, and I've made my observations. We do our best to record all of our findings at the time. But we do not always look at all the regulations. We frequently do partial inspections, and frequently our inspection notice doesn't include all of our findings.

Mr. Hernandez: Will you show me on the video where you see the water leaking from the bag?

Greg Sorenson: I did not record the water leaking from the bags. I didn't have the video camera with me at the time.

Mr. Hernandez: But you videotaped the inspection labels that went on the bag. You had the video recorder at the time.

Greg Sorenson: Okay. I didn't have the video camera at the time when the bag was there. Did you see a bag full of water?

Mr. Hernandez: But that was 3 minutes before you went and got the --

Mr. Stephens: You're asking him questions.

Mr. Hernandez: Was that not 3 minutes, 2 minutes before you went in there?

Greg Sorenson: There was a break of time of 3 to 10 or 15 minutes. Yeah, it was a very small amount of time.

Mr. Hernandez: What would you say the amount of time was?

Greg Sorenson: 3 to 10 minutes sounds like a good estimate.

Mr. Hernandez: How far do you think your vehicle was parked from the doorway of the A-1 shop?

Greg Sorenson: 50-100 feet would be an estimate from recall and having looked at the video recently.

Mr. Hernandez: So there's no visible water leaking in your video?

Hearing officer: Point of order here. If I read the notice of violation, I don't see where it's listed that the leaking bag is one of the cited items. Is that the case, or am I misreading?

Mr. Hernandez: It's rather new to this. They just barely added it. That's why I'm addressing it right now. It is not part of the original compliance advisory.

Hearing officer: Well, where is it listed? Is it listed on the later one?

Mr. Stephens: Well, a compliance advisory is different from a notice of violation. The notice of violation was issued, according to the coversheet from the executive secretary, on June 1, 2006.

Hearing officer: Show me where that's at again.

Mr. Stephens: It's document number 2.

Hearing officer: Under which grouping?

Mr. Stephens: It's document number 2 in the administrative record.

Hearing officer: Okay. That's the one I'm looking at. The point I'm bringing up, Matthew, is your questioning an area that I don't think is the subject of our hearing today.

Mr. Hernandez: But they're making it a subject of the hearings. They've asked the questions to him.

Hearing officer: And my job as hearing officer is to evaluate and determine the facts related to the findings that are in the actual notice of violation.

Mr. Hernandez: And since they're not in there --

Mr. Stephens: I can point it out to you. It's under the findings, and it's 4.b. It begins at the bottom of the page and carries over onto the next page.

Mr. Hernandez: 4.b?

Mr. Stephens: Yes.

Hearing officer: All right. I see that, and I see it stated as a fact. Is that, then, tied to violation number 2 about leak-tight containers?

Mr. Stephens: Yes, it is.

Hearing officer: Okay. Then please proceed with your questions. I just don't want to get us on a tangent that's not relevant to what I've got to be figuring out here.

Mr. Hernandez: Okay. Mr. Sorenson, have you ever worked as an asbestos worker?

Greg Sorenson: Could you clarify what you mean by an asbestos worker?

Mr. Hernandez: Have you ever bagged asbestos material?

Greg Sorenson: No. Sorry, I'm wrong. Yes, I have, as part of my asbestos inspections.

Mr. Hernandez: Have you ever bagged asbestos contaminated blown insulation?

Greg Sorenson: I've bagged insulation, but not asbestos contaminated insulation.

Mr. Hernandez: Did you add amended water to the insulation?

Greg Sorenson: I wasn't dealing with asbestos-contaminated material so I didn't need to add water. But, again, that's accounted for in your compression. When I talked about 10 to 30 yards of insulation material that water may facilitate you compressing it. It also limits, depending on how wet you get it, how much you can put in a bag.

Mr. Hernandez: Do you know what size bags A-1 Restoration uses?

Greg Sorenson: I have an approximate size.

Mr. Hernandez: Can you give that to me?

Greg Sorenson: It's somewhere between a third to a full cubic yard.

Mr. Hernandez: Can you give me a size of a bag?

Greg Sorenson: I can't give you the dimensions of your bags. There is various demensions.

Mr. Hernandez: Would 30x50 be close?

Greg Sorenson: 30 inches wide by 50 inches tall?

Mr. Hernandez: Yes. Does that seem to be correct?

Greg Sorenson: That's an approximate. Some bags are longer, and some are shorter. But that's a little over a yard, so yeah, that's about right.

Mr. Hernandez: Okay. Moving on, you said there was sheet rock upstairs during your video, with textured mud and a layer of plaster above that.

Greg Sorenson: Upstairs there was an acoustical spray back in the bedroom, which we saw on the video. The sheet rock had been textured and had been covered, but again, it was assumed to contain asbestos.

Mr. Hernandez: What I'm asking you, was there not 2 layers, a layer of sheet rock with the surfacing material and then another layer of plaster, the first layer on the ceiling?

Greg Sorenson: That had been removed. I didn't break into that and it had been removed when I got there. In the basement, that was the case and there were some indications upstairs that there may have been some plaster.

Mr. Hernandez: So you went into the back bedroom. You dressed out and went into the back bedrooms and looked to see if the ceiling had come down?

Greg Sorenson: I went into the back bedroom on -- was it June something, August -- well prior to your taking over the project. I did an inspection prior to and dealt with the owner of the facility, and that's why he contacted your company to conduct an inspection and abatement.

Mr. Hernandez: Okay. You noted there was 2 layers. You said it in your --

Greg Sorenson: At least in the bottom. There was the 2 layers down in the basement in the one corner, yes.

Mr. Hernandez: Is it possible that A-1 could have split them layers and only pulled down the sheet rock at least in the back bedrooms? One you said was being scraped and wouldn't even come down at all, right?

Greg Sorenson: Right.

Mr. Hernandez: Is that not correct?

Greg Sorenson: That is, again, possible, but looking through windows, etc., I determined that a significant amount of sheet rock had been removed. There were some layers with double layer. My estimate was based on one layer of sheet rock. If I take into the account that there was a double layer of sheet rock that would have been contaminated because it was sandwiched together, I would have estimated a full inch on my square footage, or volume calculation, and the 2000 square foot would have translated to more like 8 cubic yards just for the sheet rock and ceiling spray material.

Mr. Hernandez: Did you observe that only the living room area was pulled down?

Greg Sorenson: On the day of my inspection I observed that the living room was pulled down.

Mr. Hernandez: But the bedroom areas were still left up; were they not?

Greg Sorenson: I did not observe those.

Mr. Hernandez: Did you even notice -- could you --

Greg Sorenson: It was my understanding that they were pulled down, that it was the same material, difficult to scrape. And, again, it's an estimate based on that.

Mr. Hernandez: So you're not too sure just how accurate your estimate is.

Greg Sorenson: That's why I give a 10 to a 30-cubic-foot range, yes.

Mr. Hernandez: Were you with the asbestos insulators when they put in the blown-in insulation?

Greg Sorenson: No, I was not.

Mr. Hernandez: Did you measure how much blown-in insulation was in the ceiling during your first --

Greg Sorenson: No, I did not.

Mr. Hernandez: Why did you not do that?

Greg Sorenson: I did not enter the ceiling. I looked at the volume of insulation that was

on the floor in the living room, or in the areas that I looked at. And the piles there is the primary tool that I used for my visual estimation. I did calculations based on the square footage of the attic to correlate those findings. And based on what I found, the attic in those rooms may have been as much as a foot deep.

Mr. Hernandez: When you put amended water on the contaminated blown-in insulation, does it reduce in volume?

Greg Sorenson: When I've wetted cellulose insulation, it does compact. It becomes much easier to compact. It becomes more like a sponge, however, and expands also. You can actually get it tighter if it's dry.

Mr. Hernandez: When the asbestos material falls down to the floor from the removal of the ceiling material, does it not expand into way more of an area than it is squished up there in the top?

Greg Sorenson: Again, you fluff it up. It's -- yeah, it would expand. But again, it had been pushed to the side and compressed in the room to help control the waste. There was evidence from the picture that it had been compacted even in it's piles.

Mr. Hernandez: During your inspection on the video, did you see A-1 Restoration hooking up the water?

Greg Sorenson: I believe that they connected the water at my request. And, at that point, they told me that they'd run out of water because of the excess amount of insulation. Again, they had issues with the insulation. They'd had to -- They'd unplugged their generator and left the site. Yes.

Mr. Hernandez: Did they return and hook everything back up?

Greg Sorenson: As I pointed out, it wasn't hooked up.

Mr. Hernandez: So they hooked everything else up. They did everything else that you may have seen or requested on the site?

Greg Sorenson: As I pointed out things on site, yeah, they took care to clean them up.

Mr. Hernandez: Basically, the only thing that you said according to your inspection -- And let me see if I can find that again.

Greg Sorenson: Which inspection?

Mr. Hernandez: The inspection at Pheasant Hollow. The only thing you wrote down there was negative pressure .02, and then you put, "Corrected."

Mr. Stephens: Which document are you referring to?

Mr. Hernandez: The inspection at Pheasant Hollow. I've got to find it. I just remember it.

Mr. Stephens: 4, I believe is the warehouse.

Mr. Hernandez: Right here. Right here. It would be 5.b.

Hearing officer: So is your point that he did not document all of the discrepancies on that document?

Mr. Hernandez: Well, on this document, that he was out there and the only he seen was the air was not at .02

at the time and that we brought more negatives up there and we corrected the action. My point is that amended water -- there's nothing about the usage of amended water as being a probable violation. That's my point. I'm going to go on to the next one to more prove my point. Is that not what you wrote, "Neg air .02 corrected?"

Greg Sorenson: You're correct. That is on the inspection notice portion of that inspection memo. That is all I wrote.

Mr. Hernandez: That's what you give at the time --

Greg Sorenson: That's all I gave at the time. However, if you refer to my possible --

Mr. Hernandez: We're going to go on to your checklists, so that's all I'm asking you for right now.

Greg Sorenson: Okay. But if you look at the possible violations in my cover memo.

Mr. Hernandez: We will later, Greg. Right now, I'm just asking you is that not what you put?

Greg Sorenson: I only put --

Mr. Hernandez: "Negative air .02 corrected."

Greg Sorenson: Negative air, and that it was corrected.

Mr. Hernandez: Okay. This would be 5.c. It would be 801-14(1)(c): "Keeping RMC adequately wet until

containerized for asbestos. Prompt containerized. No visible emissions outside." You wrote "Okay" on all of them; is that not right?

Greg Sorenson: I did not go inside the containment to verify that it was a dry. That is an uncovered hand touch.

Mr. Hernandez: Why would you not go inside the containment and do your job? Is that not requested from the Division that you do full proper inspections?

Greg Sorenson: The Division allows me to do partial compliance evaluations. Evaluating A-1 Restoration was not my primary purpose there. My primary purpose was to verify that the materials were removed. Due to lack of time, I didn't even go back to verify that you'd removed them. I'd trusted that you'd removed all the waste material from the structure.

Mr. Hernandez: Why would you just assume?

Greg Sorenson: Because I trusted you.

Mr. Hernandez: Why would you just trust us? Isn't you, as a compliance officer, to make sure that you do these things?

Greg Sorenson: My job is primarily to trust you until I see evidence otherwise. And we can only inspect about 20% of the projects, and we very rarely get 100% overview of everything that's going on.

Mr. Hernandez: Okay. Let's move on to 5.k.1, the sample results.

Mr. Stephens: Do you have a question?

Mr. Hernandez: Yes. Did you send -- It says, "Dear Mr. Sorenson, these samples that were submitted to the Division of Air Quality." You submitted them, am I not correct, not Steve Beach?

Greg Sorenson: This sample, this inspection report, or inspection analysis report of June 29, 2005, is for samples I collected at Pheasant Hollow prior to your abatement. And as I remember, they were used in the inspection report for the facility.

Mr. Hernandez: Yes. Actually, A-1 done their own inspection, but -- Right here, Lab DAQ169, Field 2 basement south bedroom ceiling. Would you read that paragraph?

Greg Sorenson: "This sample contains 2 layers. The first layer is 7% chrysotile asbestos in white plaster with foam plastic. The second layer is less than 1% fiberglass in white plaster with vermiculite. This sample is non-homogenous."

Mr. Hernandez: Okay. Now let's move to A-1 Restoration's inspection of that same facility. I have to find it. I don't know which one it is. Sorry. I'm not as prepared and don't have tabs on this. I didn't have a lot of time to prepare.

Mr. Stephens: The tabs are on there. If you go to the index up front, it would be easier to find.

Mr. Hernandez: Okay. It would be 4.n. Actually, no, it wouldn't. That's not the right one. "Asbestos inspection for Pheasant Hollow from A-1 Restoration" is what I'm looking for.

Has anyone found it yet?

Mr. Stephens: I found the one for Arbor Commercial, but...

Mr. Hernandez: Well, there should be -- There was another inspection report provided by A-1 Restoration. I'm pretty sure I seen it in here somewhere. I'm sure it was a part of the record.

Mr. Stephens: Oh, I think I may know where it is. 4.f.2, is that what you're looking for?

Mr. Hernandez: 4.f.2, it probably is. Is it 4 -- no, this is for the Arbor.

Mr. Stephens: This one's also for Arbor? This says --

Hearing officer: The project is listed as Arbor demo on the upper left corner there on that one.

Mr. Stephens: When you compiled these for the file, did you ...

Mr. Hernandez: I don't see it in there. I actually have them, and I guess I'll have to submit it as evidence when we put up a defense because I just can't. I know it was sent in, but I don't find it here.

Hearing officer: Well, if you believe, in your presentation, that you'll come across it, why don't we proceed.

Mr. Hernandez: Actually, yeah. It's actually the same percentage as what Greg took on the asbestos material. A-1 conducted a full inspection of the material prior to the demolition, and we've come back with 7% asbestos in the material, in the surface coating material. And basically, it's the same as the results of the one that Mr. Sorenson took. If we could just go back to the one Mr. Sorenson -- the inspection report from -- which one is that again? Right here. We're looking for the inspection report provided by Greg Sorenson.

Mr. Stephens: Now, which one are you referring to, the one for Pheasant Hollow?

Mr. Hernandez: From Dixon on Pheasant Hollow.



Mr. Stephens: I think you've got your finger on it right there on the left-hand side. What tab is that?

Mr. Hernandez: 5.k.1. Greg, you indicated that there was -- the first layer is 7% chrysotile and the first layer is 30% of the sample; is that not correct?

Greg Sorenson: You're saying on field sample 2?

Mr. Hernandez: Yes.

Greg Sorenson: The first layer is 30% of the sample.

Mr. Hernandez: And it come back 7%?

Greg Sorenson: Yes.

Mr. Hernandez: And we considered that to be a regulated asbestos containing material, 7%?

Greg Sorenson: Yes.

Mr. Hernandez: A-1 Restoration had sent in an inspection report and had it onsite. Did you not see the same 7%?

Greg Sorenson: This is a sample from the basement --

Mr. Hernandez: Yes.

Greg Sorenson: -- in a specific area where I had whole ceiling material. Yes, that is what I saw, 7%.

Mr. Hernandez: 7%. If you'll read and it would be tab 4L where it says, "Field insulation outside," does it not say that there are 6 different types of material in this sample?

Greg Sorenson: In field sample 2?

Mr. Hernandez: Field sample 1.

Greg Sorenson: I know there are a lot. 6 types of material, yes.

Mr. Hernandez: 6 types of material. One of them, the second type, contained 1.5% asbestos and the 6th type contained 2% asbestos. The second type is 20% of the sample and the 6th type is less than 1% of the sample. The 1.5% and the 2%, shouldn't somewhere in there -- if it comes from Pheasant Hollow, shouldn't it not say "7%" like the other 2 inspection reports say?

Greg Sorenson: Not necessarily.

Mr. Hernandez: Why would that not be? It is the same material, Greg Sorenson.

Greg Sorenson: There were multiple materials at the Pheasant Hollow business site that I didn't sample. One of which is the retexturing of the ceiling upstairs where the 7% material may have been incompletely scraped and you have a re-mixture based on the re-application of the ceiling texture. It's also a different material. The samples from before are only in the basement. The material upstairs was a different material.

Mr. Hernandez: So you're saying that there's no way to tell if this material come from Pheasant Hollow or not.

Greg Sorenson: I'm saying that these samples were taken from the basement.

Mr. Hernandez: Why didn't you take one from upstairs? Did you just assume it was the same material? If not you would have had --

Mr. Stephens: No, you need to let him answer the question.

Mr. Hernandez: Did you just assume it was the same material?

Greg Sorenson: I sampled disturbed materials.

Mr. Hernandez: Did you assume that the upstairs textured material was the same as the downstairs textured material?

Greg Sorenson: I did not do that until after re-reviewing the videotape, looking at the analysis results. I was depending upon A-1's inspection at the time of the follow-up to complete the inspection of the upstairs and the other materials and...

Mr. Hernandez: And?

Greg Sorenson: And I made the observations based on that, realizing there were multiple materials.

Mr. Hernandez: It says here that there were 6 types of material on lab, but back here, it says there's only 2 types of --

Mr. Stephens: Okay. You've already asked him that question so I'm going to object.

Mr. Hernandez: Is that not different? I'm asking the types now, not the percentage.

Greg Sorenson: I just want to point out that there's a brown vermiculite insulation from the basement. Okay? So in my sample I'm collecting brown vermiculite. And in the second sample it's white gypsum plaster with perlite. Okay. These are Steve Beach's results. If we go back to

my -- so Steve Beach only found 1.5%, but he found --

Mr. Hernandez: In 20% of the sample.

Greg Sorenson: -- brown vermiculite and pearlite. And if we go back to my sample, back to 5.k.1, 454 West, basement hall, I have white plaster with vermiculite, and the difference would be the -- Sample 2 refers to the foam, which is more characteristic in more of the softer acoustical sprays, but it also has a layer of white plaster with vermiculite.

Mr. Hernandez: It still doesn't jive, Greg.

Mr. Stephens: Okay. You know what? You have to ask him questions. You don't get to suggest things to him. You need to ask him questions.

Hearing officer: Let me suggest here something, and that is that you seem to be focusing on the sample of loose material that was on the floor of the warehouse as somehow being representative of the Pheasant Hollow project.

Mr. Hernandez: That's what I'm gathering.

Hearing officer: I cannot see how you can establish a correlation. That stuff on the floor may have been there from any other number of projects. It is of concern that you had material on the floor of your warehouse that had asbestos in it that was not properly contained. It was loose. But the point I'm making here, which is that the facts we need to establish for determining whether or not the notice of violation is accurate or needs to be modified, I think, has to do with what was in the Pheasant Hollow structure. You have agreed in the conversation that there was some material that did contain asbestos in that Pheasant Hollow structure. And I'm not sure where your line of questioning's going, but it seems to me that we need to focus on establishing the facts.

Mr. Hernandez: We're showing that this come from the Arbor project and not the Pheasant Hollow project, and that he's just guessing where this stuff come from. That's our point.

Hearing officer: He earlier, under oath, said that he recognized some materials -- I guess the relevant question is the materials you recognized, were they loose on the floor or in the bag, or did you even see the loose stuff that Beach sampled?

Greg Sorenson: Okay. At the warehouse, I'm looking at Beach's samples and I'm looking at what I saw through the window and on site at Pheasant Hollow. So I'm doing it in an abstraction or contraction or whatever. I'm comparing the 2 materials, what I visually saw, brown cellulose insulation. There were, again, multiple types of materials at Pheasant Hollow, but one of the main types of material was the brown insulation that you saw in the video, that had come down in the ceiling.

Hearing officer: Did you see that, then, in bags at the warehouse?

Greg Sorenson: The insulation that Steve Beach has in his photographs, which we haven't looked at, look similar based on the photographs. But, again, what I'm looking at it not as much the similarity of the materials as the volume of materials expected to be disposed of at Pheasant Hollow.

Hearing officer: Okay. Thank you.

Mr. Hernandez: Did you ask Cameron Hernandez any questions about where the material had come from?

Greg Sorenson: I talked to you, is what I remember, at the warehouse, and I asked you where the material had come from and I told you of my quandary with the asbestos fragments --

Mr. Hernandez: What did I tell you?

Greg Sorenson: You restated that it came from Arbor. That didn't answer the question.

Mr. Hernandez: Did you drive out to the Arbor project?

Greg Sorenson: I had conducted an inspection of at least 1 or 2 structures during the demolition phase at the Arbor project. I couldn't tell you whether or not this was one of them. I'd have to go look at houses, because there were lots of houses.

Mr. Hernandez: Did you go to this house particular after you found out that this may have been where the asbestos had come from?

Greg Sorenson: I depended upon A-1's inspection report.

Mr. Hernandez: So you didn't go out there and check it out?

Greg Sorenson: I did not go to the Arbor Commercial. I depended upon A-1's inspection report.

Mr. Hernandez: Now, in the Pheasant Hollow, I noticed there was some, I guess you would call, heating lines, little plastic lines that went through. In the debris of insulation, did you find any of them lines in there?

Greg Sorenson: Well, I know they were there and I know they were embedded in a hard plaster.

Mr. Hernandez: That's not what I'm asking. In them insulation bags that you seen in the pictures, because you never were there at the shop while they were there. In the pictures, did you see any of them little plastic heating lines?

Greg Sorenson: No, I just see fragments of sheet rock or plaster.

Mr. Hernandez: Would you -- those heating lines are made of plastic?

Mr. Stephens: He answered your question, so he didn't see them

Mr. Hernandez: I'm asking another one. Is them heating lines made of plastic?

Greg Sorenson: Yes, they are.

Mr. Hernandez: Then wouldn't there be small chips of plastic also noted in the sample results if it come from Pheasant Hollow?

Greg Sorenson: Not necessarily. It depends on how the material was broken up and how they were cut. The -- Again, like the vinyl asbestos floor tile, which is very malleable, the plastic is very malleable, you can stretch it without it tearing or breaking, it's more likely that you would have had to break the plaster and then cut those lines to help get it down off the ceiling.

Mr. Hernandez: Did you see this happen?

Greg Sorenson: I did not see it happen at your location.

Mr. Hernandez: Thank you. Let's move on. At the asbestos shop video, I noticed the video was turned off abruptly and that there was -- I know there was more video. How come you erased some of the video?

Greg Sorenson: I wouldn't say there was more video. I shut the camera off.

Mr. Hernandez: In the middle of a sentence -- of my sentence?

Greg Sorenson: I wasn't there to record your voice. I'd recorded the --

Mr. Hernandez: You didn't videotape Cameron Hernandez or anything else there?

Greg Sorenson: Not anything else there. I videotaped that material.

Mr. Hernandez: That's all I have.

Hearing officer: I have a couple of questions. Concerning when there's a non-homogenous sample that's been collected and analyzed and parts of it contain asbestos and parts don't, how is the -- or what is the criteria for when the entire body of material needs to be handled as asbestos containing or as asbestos waste, particularly where you have a couple of constituents, or fractions of the sample, contain low levels of asbestos such that when the entire sample is considered, it will be less than 1% asbestos?

Greg Sorenson: There's no clear criteria, but the criteria that's used is you've got your containment, so which is your plastic. One of the things we haven't talked about is the volume of plastic from the project. In the Draper project, for example, you saw some big bags. The bags that tend to be big and full to the top and just stretched out to the max tend to be the poly that comes off the project after it's all said and done. So there's 2 layers of plastic on the walls and on the floor that make the containment. So anything that's not, that's in that containment, that has the evidence of not being controlled or being contaminated, needs to be disposed of as asbestos waste. All your clothing, your last wipe rags that you use as you leave the site, everything that you take off of that site, basically, from your waste needs to be either labeled "non-asbestos" because you kept track of it and it was non-asbestos, or you put it in a regular waste bag or you put it in an asbestos waste bag because it's asbestos. It gets a little bit more difficult when you're dealing with something that's not contained.

Hearing officer: All right. So in the case of the Pheasant Hollow project, there were certain layers that appeared to have asbestos and others that did not.

Greg Sorenson: Yes.

Hearing officer: Under the rules, can a contractor proceed in a manner to remove the asbestos layer and then determine no further asbestos present and then remove the rest without having to follow asbestos control procedures?

Greg Sorenson: Yes. With the inspection, that starts with the inspection. And so, yes, they can do that. They basically document homogenous areas of the building and the types of

materials, where they're at, how much material is there, and they can build their containments around those homogenous areas.

Hearing officer: Yes, but if there's an area that does have asbestos, let's say an outer layer that's then stripped off and properly handled and taken care of and labeled and the bags go somewhere else and all the custody and so on is followed. Now that material's gone, but the entire substraight is not removed, just the part that had the asbestos in it. Let's say the second or third or however many layers, they're still there, but they haven't been disturbed and they don't have asbestos. What does a contractor have to do, now, to declare the asbestos removal complete so that further demolition can occur?

Greg Sorenson: It's basically using the asbestos inspection report. If they uncover new materials, they may have to conduct additional sampling. But once they've removed the asbestos, everything is left in place. They clean it. They encapsulate other materials that may have a residue of asbestos. In other words, they don't have to tear down the walls. They don't have to tear down the ceiling. They just need to get the asbestos component off.

Hearing officer: Okay. So now as the inspector checking for compliance on a site similar to that, what would you require for records and documents to show that the proper layer had been removed before other material was declared to be non-asbestos and able to be removed by other means?

Greg Sorenson: Again, it's the inspection report addressing the materials. One of the materials that -- another material that typically contains asbestos that's left in place is the wall system, so the sheet rock in the corner. So one of the things that the inspector's tend to do is take a sample in a place on the wall like the corner where they're most likely to get the most different types of mud, and that one sample can be a composite and you can look at it from the 1% rule. Dixon Information will break down all the layers and tell you what the specific layers are, but most labs just take that as a full composite and evaluate it that way.

Hearing officer: Okay. Well, Dixon knows breaking things up into constituent parts?

Greg Sorenson: Dixon goes through the labels, even in the wall system, and then they give an additional analysis, which is the full analysis for the wall system. So on a typical wall system, you might get less than 1%. You won't get non-detect. You'll get less than 1% because they'll find it in the sample, and it's usually a fairly small sample when it's either a sprayed on acoustical spray on the wall -- or a stipling spray on the wall. If they've mixed their mud right, the wall is one of the more difficult places to prove that it's not asbestos containing because you have to collect so much of the material to eliminate it. The wall system it's usually one well placed sample that eliminates it. And, again, it's the asbestos inspection. You look at the asbestos inspection report, the materials evaluated, where they're at. Acoustical spray tends to be on the surface and is very easy to remove. When you start getting into cementous coverings, it's harder for them to scrape and it would have been more important for me to go back to the site and evaluate whether or not they had cleaned the plaster because you get uneven surfaces and you get ridges and if they're in a hurry they'll leave patches of asbestos of the regulated materialsd, and we'll inspect and they'll have to go back. But when Matt demonstrated that he was removing the ceiling and indicated that that was the choice because it was hard to bring it all down and separate it, it was I guess quicker to take the sheet rock down.

Hearing officer: So your understanding was that they chose not to try to strip out just that layer, but they'd treat it all as asbestos waste?

Greg Sorenson: Yes.

Hearing officer: And, therefore, would generate the larger volume of material that you expected to see on the manifest?

Greg Sorenson: And from what I saw. My estimates are based on what I saw.

Hearing officer: Did you receive any notification of further analysis or sampling or anything to try to segregate the asbestos containing material from the rest of the building structure and do this in stages?

Greg Sorenson: I remember being disappointed, and there's 2 copies of one of the attachments to my sampling, and that other one should have their inspection report for the Pheasant Hollow. And I remember being disappointed that they hadn't done more evaluation to reduce the amount of asbestos waste being generated.

Hearing officer: So you did not receive any inspection reports that indicated verification

of asbestos removal was complete and in a staged manner or that sort of thing?

Greg Sorenson: No. And they typically don't do post demolition or renovation reports. That's completely dependent upon our going out and conducting an inspection on site.

Hearing officer: Did you take the videotape of the warehouse?

Greg Sorenson: Yes. All 3 of those videotapes are mine.

Hearing officer: Where those labels were shown on the bags?

Greg Sorenson: Yes. I took those after I'd come back into the warehouse, because I didn't expect to find unlabeled bags. I'd expected to be in and out and gone.

Hearing officer: Now the labels that were on the bags -- we could look at that tape again, but you zoned in on one. Was that from the Arbor project? Is that what they were labeled?

Greg Sorenson: No, that was the Draper project.

Hearing officer: Okay. A different project?

Greg Sorenson: Yeah, that was the Draper project that that waste came from.

Hearing officer: Okay. So there are 3 projects going on here.

Greg Sorenson: There's 4 with the Saint George one.

Hearing officer: Okay. Saint George, Draper, Pheasant Hollow and Arbor, right?

Greg Sorenson: Yes.

Hearing officer: And those bags were all labeled for the Draper project; is that true?

Greg Sorenson: The bags that I saw in the warehouse were all labeled for the Draper project. Any bags that Steve Beach had seen, I didn't see any evidence that they were there. There were some areas I didn't do a thorough evaluation of the warehouse. There are some places they could have been. For example, one of the things in the warehouse was a big trailer, but I did not evaluate the specific areas of the warehouse or anything else around the warehouse as far as dumpsters anywhere else to see if they had dumpsters.

Hearing officer: Yeah, I understand that. What I was mainly trying to understand was that the bags that you observed labels being put on --

Greg Sorenson: Yes.

Side 2

Hearing officer: -- and the labels were filled out more or less to be in compliance with labeling of asbestos waste or asbestos containing material?

Greg Sorenson: Yes, as generator labels.

Hearing officer: Right.

Greg Sorenson: As I walked out, I saw their sheets. They'd made the copies and they had the sheets available. They just needed to cut them up or tape them or glue them to the bags.

Hearing officer: Okay. I don't think I have any other questions. Counsel, do we need to confer at all?

Mr. Stephens: I just have maybe one question to redirect here. This is going back to -- There's more than one of these in the administrative record, but it's just a general question about inspection notices, so it's not relative just to one specific one. This is just a question of practice here at the Division of Air Quality, Greg. Do you -- Is it your practice to put down every conceivable violation that you observed on an inspection notice?

Greg Sorenson: If I have time. My practice is to very explicitly list the citation and the finding. And in these cases, I was in a hurry in both cases, or I had other places to be, and so the inspection notices are more characteristic of the rest of those in the division. My typical is uncharacteristic.

Mr. Stephens: Okay.

Hearing officer: When you're done, I want to ask a similar question.

Mr. Stephens: Sure. Just one other follow up question. Did the inspection reports that you fill out, specifically the one in here, contain all of the ultimate findings that you determined from your inspection?

Greg Sorenson: I believe they do.

Hearing officer: Matthew --

Mr. Hernandez: A couple more questions.

Hearing officer: Great. Matthew, just so you're aware, I used to work for a regulated entity that's involved with inspections both for asbestos and for air quality/water quality, whatever, okay?

So my question is, is there anything in the rules or procedures that you have to follow that require you to list every discrepancy you find at the time you complete your site visit or is it -- Well, let's just ask that question first.

Greg Sorenson: Not that I'm aware of.

Hearing officer: Okay. What did you do to notify A-1 of your entire list of discrepancies following the completion of your site visit? You apparently found other things besides, in the case of the Pheasant Hollow, the negative differential on the containment, and apparently you found things at the warehouse other than you listed on the inspection report there. How was A-1 notified of those additional discrepancies?

Greg Sorenson: The only thing I did was discussion at the time of those additional discrepancies that I noted. Again, I was scheduled to be somewhere else. I had expected it to be a fairly quick inspection so I hadn't gone there with an open-ended inspection in mind. I put it as part of a schedule of other things to complete and it's partially of the time of day.

Hearing officer: Did you verbally notify anyone of those other discrepancies?

Greg Sorenson: I believe that I notified them of all the discrepancies that I saw, including -- Well, the one where he goes up and I pointed out, "Well, you've got a flap open," and he said, "Yeah, I needed --" And he jumped right on the roof and corrected it. And so ...

Hearing officer: That was on the videotape.

Greg Sorenson: That was on the videotape. And again, that was something -- that may have happened just a few minutes before. And the rules require that they just do it as soon as they notice it. And they did. And so I didn't have any reason or any purpose of going into any more detail. I'd have to look at my memo to see if I discussed them actually getting up and taking care of it quickly, and I would expect that I did on those additional violations.

Hearing officer: Thank you. Matt ...

Mr. Hernandez: Did Clint Clinton tell you that we had a double critical, that there was also another layer on the inside in order to achieve our .02?

Greg Sorenson: I don't remember the specific conversation on that. I remember looking up and not seeing anything through it. It appeared that I could see in through to the attic, or to the roof and the attic, but that's -- and I don't know if my videotape shows that. I'd go back to my videotape to see if it showed that. Again, my focus was on making sure the negative pressure was working and that you were running that and that you understood what needed to be done.

Mr. Hernandez: Okay. A couple more questions. At the shop warehouse, at the end of the inspection, did myself and yourself have an altercation?

Greg Sorenson: I didn't view it as such until I returned to work.

Mr. Hernandez: Was it you reported to the Division of Air Quality for altercations?

Greg Sorenson: I'm aware that you filed a complaint against me, yes.

Mr. Hernandez: That'll do.

Hearing officer: Any other questions?

Mr. Stephens: No. We're done here. Thank you, Greg. We'd like to call Bob Ford as our third and final witness.

(Background talking)

Recorder: Could you raise your right hand for me?

Bob Ford: Okay.

Recorder: Do you swear to tell the truth, the whole truth and nothing but the truth?

Bob Ford: I will.

Mr. Stephens: All right. Will you please state your name?

Bob Ford: Robert Ford.

Mr. Stephens: Where are you employed?

Bob Ford: I am employed at the Utah Division of Air Quality.

Mr. Stephens: Okay. What is your current position?

Bob Ford: I am manager of the hazardous air pollutant section.

Mr. Stephens: Okay. How long have you held that position?

Bob Ford: Approximately a little bit over 2 and a half years.

Mr. Stephens: Okay. What was your previous position?

Bob Ford: I was an environmental scientist within the hazardous air pollutant section.

Mr. Stephens: Okay. What are your responsibilities in your current position?

Bob Ford: My responsibilities include the oversight of the asbestos, lead-based paint and stationary source, Mac'd programs for the Division of Air Quality.

Mr. Stephens: Okay. Could you please give us a brief outline or description of how the inspection and compliance process works?

Bob Ford: You bet. Basically, we receive information two different ways and we generate inspections based on those 2 different methodologies. One is complaints from the public. The other methodology, and the one we use most often, is notification forms that are submitted by regulated entities within the -- that are regulated by the hazardous air pollutant section. And that's specifically how we do that with the asbestos program. Typically, complaints are assigned to specific individuals. The notification forms are put into an area where inspectors will go look and pick out different notification forms, and then they go out and do inspections at those different facilities.

Mr. Stephens: Now, at what point -- Well, let me ask a basic question. Is it possible to inspect every asbestos project that goes on in the State?

Bob Ford: No. We don't. We simply don't have the resources. We don't have the personnel to inspect every project that we receive a notification form, but the last time I evaluated that, it was approximately 20-25% of the projects that we receive notification forms for a week do we go out on inspections for.

Mr. Stephens: Okay. Could you describe for us at what point you become involved?

Bob Ford: After an inspector goes out and visits a site, basically one of 2 different things occurs. If the inspector determines that there has not been a violation from their perspective of our air quality rules, then I'll receive a memo typically within 15 or 20 days and I'll evaluate that memo. Oftentimes, there's a discussion to clarify any questions that I may have and ask the inspector questions. If there's been a determination by the inspector that he or she believes that there has been some type of violation, or potential violation, usually there's a discussion within a very short period of time and we'll make a determination whether a compliance advisory asking for additional information, still an inspection tool from our perspective, needs to be sent out or whether there's a notice of violation, order to comply if there's some type of egregious or significant issue that needs to be addressed in a very short time frame.

Mr. Stephens: Okay. So you mentioned a compliance advisory. What are the possible options for dealing with compliance issues once they're identified by an inspector?

Bob Ford: Typically we send out a compliance advisory. That gives the regulated entity an opportunity to inform us of their concerns or questions, their perspective on this thing. After that, if we determine, or still believe, that there has been some type of violation, we will either send out a notice of violation order to comply or we will send out -- and this is what we do most typically -- an early settlement agreement, which offers an administrative way to resolve our concerns with the regulated entity. And one of the other options we have is if after the compliance advisory we determine there hasn't been any type of violation, then we could send out a no further action letter.

Mr. Stephens: Okay. You've already hinted at this, but how do you decide whether you should issue a notice of violation?

Bob Ford: Basically we evaluate the observations, laboratory results if appropriate, if samples have been collected. From the inspector, we have a discussion. We'll sit down and evaluate if there indeed has been some type of violation and that would be the direction we would normally take.

Mr. Stephens: Okay. This is document 2 in the administrative record. Are you familiar with this document?

Bob Ford: Yes I am.

Mr. Stephens: Okay. Could you please tell us what it is?

Bob Ford: It's the notice of violation that was sent by the Division and signed by the executive secretary to Matt Hernandez in A-1 Restoration.

Mr. Stephens: Okay. Now, did you have any role in the issuance of this notice of violation?

Bob Ford: I did.

Mr. Stephens: What was your role?

Bob Ford: To explain what our process was, there had been some inspections that had been performed, and I know we're all aware of. And we also sent out an early settlement agreement associated with this to A-1 Restoration and Matt Hernandez. Matt indicated to me that they were not going to take advantage of that process, and so I indicated to him that our typical procedure would be to send out a notice of violation, order to comply. But I sat down with all the information that had been collected that was available to me in discussions with the inspectors, both Steve Beach and Greg Sorenson, and evaluated and tried to make -- and made a determination that there were violations associated with the Utah Air Quality rules and instructed Greg to write a notice of violation based on those findings.

Mr. Stephens: Okay. Does this notice of violation enumerate the violations that are believed to have taken place?

Bob Ford: Yes, it does.

Mr. Stephens: Okay. Now, for violation number one, can you give us just a brief description of what you believe the legal standard was that was violated and why you decided to go ahead and cite them as a violation?

Bob Ford: I can do that. Item number one was principally based on, and my decision was based on, Steve Beach's and Salt Lake Valley Health Department's inspection where they found asbestos containing materials both outside and inside the A-1 Restoration warehouse, and that those materials were dry, and they were not contained and they were open to the air and open to the environment.

Mr. Stephens: Okay. And how about the second one?

Bob Ford: That is based on the Utah Division of Air Quality's inspection with Greg Sorenson in that he found one or more bags of asbestos-containing waste materials that were leaking inside the warehouse as well as the inspection performed by Steve Beach and Salt Lake Valley Health Department when collecting the samples during his inspection time period.

Mr. Stephens: Okay. And the third?

Bob Ford: Yeah, the failure to label. This is based on Greg Sorenson, Division of Air Quality's inspection when he went into the warehouse, found one or more bags of asbestos containing waste materials in asbestos bags and could not find any asbestos labels on those bags and, therefore, did not include any of the required information.

Mr. Stephens: Okay. The fourth?

Bob Ford: Item number 4 is based on, again, 2 different items, that the material that was found outside and inside the warehouse that was loose and not contained within the bags was not properly disposed of at a landfill. There was enough material there to collect samples from as well as an evaluation by Greg Sorenson of the waste manifest in an inspection that he had performed at a project subject to the asbestos NESHAP that found considerably more material during his inspection than what was disposed of at the landfill. And so, therefore, we believe that there was additional materials that should have been properly disposed at a landfill that were not disposed at a landfill.

Mr. Stephens: Okay. And the last one?

Bob Ford: That was, again, an evaluation by Greg Sorenson of the waste manifest and in that evaluation did not have telephone numbers as required by state rules for the generator's telephone number.

Mr. Stephens: Okay. Thank you, Bob. That's all I have for him.

Mr. Hernandez: You said it was for state rule for the telephone number; is that correct? Or is it part of the federal rule?

Hearing officer: The reference on the -- excuse me, but the reference on the violation is, to quote, a federal regulation.

Mr. Hernandez: That's what I was trying to correct. He said state. That's all.

Hearing officer: Thank you, Matt.

Bob Ford: Right. In our 307-214, which is a state rule, incorporates the federal regulation by reference and so I -- Yes, that is true.

Mr. Hernandez: Okay. It would be Exhibit 4.p. Are these your notes, Mr. Ford?

Bob Ford: They are not.

Mr. Hernandez: Are these the notes of the advisory meeting that we first held?

Bob Ford: You know, I don't know, Matt, to be honest, but I believe it is. Looking at



what's included in this, I believe I know who the individual is who created these notes, and I believe based on what I'm seeing here that that is, indeed, what this was from, the compliance advisory meeting.

Mr. Hernandez: Okay. If you'll read, according to these notes, it says 2 other companies or identities,

a

Chester Goodman and an Accelerated Design and Construction also utilized the shop at 3345 South ...

Mr. Stephens: Are you asking him a question?

Mr. Hernandez: Yes. I says is there not two other entities that use that shop?

Bob Ford: You know, I don't know --

Mr. Stephens: I'm going to object to the question. You're asking him to speculate based on what are on notes that he didn't write, whether two other people used the shop.

Mr. Hernandez: I'll rephrase the question. At the advisory meeting, did A-1 Restoration not suggest that Accelerated Design and Construction removed the insulation out at the Arbor project, and some of it was put into our shop by two Hispanics?

Bob Ford: And if the question is, do I recall that? Matt, I don't recall. I don't recall that discussion.

Mr. Hernandez: At the compliance advisory meeting, did A-1 Restoration suggest that all the bags were tagged prior to leaving the asbestos site at 700 East, out at the Draper job?

Bob Ford: I do recall that that discussion did take place, that there were labels that were put onto the bags. It was reported to us that there were labels that were put on the bags, and my recollection of the conversation was that apparently they had --

Mr. Hernandez: Some had blown off --

Bob Ford: -- blown off or dislodged or whatever the appropriate term would be, from the bags during the transportation process. That was a statement that A-1 Restoration made during that meeting.

Mr. Hernandez: And A-1 had tags already cut up and that prior to Greg Sorenson's video. Is that not true?

Bob Ford: I don't know that I -- I wasn't there at the time of the inspection, and so I do not know whether labels were made before time or not, Matt.

Mr. Hernandez: Would it be safe to say that A-1 could not have copied off a bunch of them, cut them all up, and had them ready for labeling? Is that pretty much hard for A-1 to do on the spot, to make them up?

Bob Ford: Again, I wasn't there at the time. I don't know how much time --

Mr. Stephens: I'm going to object. That's a speculative question.

Mr. Hernandez: Okay. Other than that, I only have a few more questions. Was Greg Sorenson reported to the Division of Air Quality for slamming a car door into Matt Hernandez and chasing him to his shop location?

Bob Ford: There was a complaint made and you had given me a telephone call and were concerned that there was some inappropriate behavior associated with our inspector out on site. That is correct.

Mr. Hernandez: Did we have a meeting on it with Bryce and --

Bob Ford: You know, I'm sorry. I'm not trying to be argumentative or distant, I don't -- I remember discussing this several times with you, but not a meeting.

Mr. Hernandez: Did you have a meeting with Greg on his actions?

Bob Ford: Yes, I did.

Mr. Hernandez: So there was actually some type of follow-up on our conversation?

Bob Ford: Yes, there was follow-up on that. And for further clarification on your previous question I thought you were inferring that there was a meeting with me, you, me and Bryce on that and that's what I don't recall. Bryce and I and Greg have had meetings associated with this and there was follow up associated with it.

Mr. Hernandez: Was Greg disciplined for this action?

Bob Ford: No, he was not.

Mr. Hernandez: Do you think that was fair for Greg not to be disciplined?

Bob Ford: Based on my discussions with Greg, your discussions with Bryce and discussions with our human resource management, we felt that was the appropriate action at that

point in time.

Mr. Hernandez: Do you believe that Greg dislikes Matt Hernandez, myself?

Mr. Stephens: I'm going to object. That calls for speculation.

Mr. Hernandez: He is his supervisor and it would stand for grounds on why Greg might exaggerate or say things that wouldn't be normally true.

Hearing officer: What I'm wondering is what -- and until you brought it up, the behavior of the various participants with regard to confrontation are not --

Mr. Hernandez: This is at the actual projects, the site at 3, at the shop warehouse site during the inspection.

Hearing officer: Well, the question, I guess I have is, is it relevant because --

Mr. Hernandez: It just goes to show that Greg Sorenson's testimony might be a little corrupted or one-sided.

Mr. Stephens: If I can point out, he's appearing on behalf of the Division of Air Quality. His testimony is definitely one-sided. He's here to testify on based on what he did.

Hearing officer: Greg's is?

Mr. Stephens: Sure. He's on behalf of one of the parties.

Hearing officer: And then Bob, as his supervisor, was notified of a dispute and confrontation --

Mr. Stephens: Right, a discreet incident. And Bob has answered his question. Well, what was your answer? You said you're -- I think it calls for speculation.

Mr. Hernandez: We can move on. It's not going to be that big of a point. I'll bring it up again in the defense a little bit that it actually happened. But other than that, we just want to show that Greg doesn't like me or my company.

Hearing officer: Okay. Well, duly noted, I guess.

Mr. Hernandez: Way beyond normal.

Hearing officer: The thing that I think is most important is to establish the facts and while, I guess, we duly noted, I'm much more concerned about whether your company is properly labeling asbestos containing material or waste and what the photographic record shows, and, at this point, that's much more important to me --

Mr. Hernandez: I'll withdraw this question.

Hearing officer: And I'll try to give you due process and a fair hearing. That's where I want to focus.

Mr. Hernandez: Okay. I understand. I have no more questions for Mr. Ford.

Mr. Stephens: Okay. That's all the witnesses that we had, unless there's any other questions from the hearing officer.

Hearing officer: I have some if that's okay. Bob, I was looking at the -- there's an inspection report that Greg did --

Mr. Stephens: If it's for the warehouse, that would be document 4. Is that the one you're referring to?

Hearing officer: Probably. It's a handwritten -- and it's actually 4a. Now, this 4.a was for an inspection done on August 26, 2005, according to the first page. And the inspector was Greg Sorenson. It indicates the type of inspection was a complaint. And the applicable rules, NESHAP is circled, but then there's an X by it on about the 4th or 5th line down, and then "status" circled. What does that mean? This is DAQH-864-05 handwritten copy behind tab 4.a. Are you with me, Matthew? Do you see what I'm talking about? It's the very front page.

Mr. Hernandez: Very front page, okay.

Hearing officer: I'm going to understand the inspection report. Right at the top, Bob, under applicable rules, which is the 5th line down. NESHAP is circled, but then there's an X by it and then "status" circled. Can you tell me what that means?

Bob Ford: This is a document that was created by Greg and is typically done while out on site and so the answer to your question is I don't know what that refers to. I could speculate, but I know during our discussion there was some question whether this material was subject to the NESHAP, did it come from a regulated project or did it not come from a regulated project. And so that's why, I think, Greg may have done that, but I'm not absolutely sure. It wasn't a mark that I put on the document. This was something that Greg did.

Hearing officer: Yeah. I'm just trying to understand how your department works and

what the shorthand means, okay?

Bob Ford: Okay.

Hearing officer: On the second page a number of items are circled. For example, under the top block there that's in a square block, 145.b is circled. 145.c.10 is lined out. What does that mean?

Bob Ford: This is giving guidance to the inspectors as to when they use those symbols further on in this checklist, what they actually mean.

Mr. Hernandez: It's an example, it says right there.

Hearing officer: Okay. That's an example, then. So then circled items, then, in this section headed down there, all these areas that are circled were not inspectable or not able to be observed.

Bob Ford: That is correct.

Hearing officer: Okay. So then we go over to page 4, and certain items were -- At the top, "outdoor work" and "decontamination" were circled indicating not inspectable or not observed.

Bob Ford: That is correct.

Hearing officer: And then waste disposal, there are some areas that are marked off there.

Bob Ford: That is correct.

Hearing officer: Okay. And then there's a drawing on page 5. Let's go back, first, to page 4. What I see here is in compliance, during this inspection, wet ACM and keep wet during removal is not observed or not inspectable because it's circled, correct? Even though there's an X by the block. Is that right?

Bob Ford: Yes. He's indicated possibly for 2 different items that there was one that was in compliance. The other one was circled, and, therefore, was not inspectable or unable to be observed.

Hearing officer: Okay. So the out of compliance items, then, are the ones with the X's in the column labeled out?

Bob Ford: Yes.

Hearing officer: And there's one on 150.a.1 where there was an X in the N and then an arrow drawn over to an X in the other. Did you discuss with Greg anything about that?

Bob Ford: I don't recall having a discussion with him about that. Typically, what I like to see with these checklists is a very distinct mark in one location or the other. Or if there's some type of question then there's some type of explanation associated with that, and I just don't recall having a conversation with Greg about this and why it was done the way it was done.

Hearing officer: Okay. Now over on page 5, then, down at the bottom, the inspector signed it and dated this on November 23, 2005, which the original inspection occurred on August 26th.

Bob Ford: Yes.

Hearing officer: Is that an acceptable length of time to be executing an inspection record, nearly 3 months later?

Bob Ford: We'd surely like to have them in a shorter time period than that, and I do not specifically recall why this was an extended period of time. What we do is that if there typically is not a violation -- and of course that is not the case here. This is a stand-alone document that will be used as the inspection by the inspector. There's no formal document. When there is an enforcement action, then this is being used as a checklist to augment a memorandum. And so, typically our time frames are that we like to have them done in a much shorter time period than that.

Hearing officer: Would you require normally an asbestos removal inspection checklist be filled out for any inspection that your folks do?

Bob Ford: It's not -- When we have an enforcement action, it's not something that's necessary, from my perspective. Surely, when there's no enforcement action, it's the only document, then, yes, it's required. But the checklist is meant to be a guide for the inspector to make sure that he or she is being very thorough with their inspection activity.

Hearing officer: But they don't normally have one of these onsite when they're going through an inspection?

Bob Ford: They typically would have this onsite with them to help with that inspecting process. I haven't always required -- if they want to submit that as part of their memorandum,

that's fine. It's not required when there's some type of violation or enforcement action.

Hearing officer: If there is a violation or enforcement action how soon do you expect one of these to be filled out?

Bob Ford: I believe our agreement that we have and what I try to use with staff is a 20-day requirement. 20-business days.

Hearing officer: This one's about 87 days.

Mr. Hernandez: Date of inspection 8-26-05, right?

Bob Ford: Roughly.

Mr. Hernandez: And then it's signed 11-23?

Bob Ford: Yeah. And that is correct. If I can --

Mr. Hernandez: Did you not state that --

Hearing officer: Excuse me, but, my turn.

Mr. Stephens: It's not your turn.

Mr. Hernandez: Sorry. Excuse me.

Hearing officer: Were you going to say something else, Bob?

Bob Ford: Yeah. I was looking back at the Exhibit 4, which is the type-written memo that Greg created and I was just looking at the date on that and that was also November 23rd. No explanation is -- we want to have things in a shorter time frame than that. This was a quite involved with getting sample analytical results back as well as working with Salt Lake Valley Health Department. I don't know if that helped extend this process, but this is a little bit longer than we typically would allow.

Hearing officer: Now, if we could turn back to Exhibit 2. Chris, led you through the violations earlier. I'd like to ask a couple questions there if I could. On number one, the criteria for having a violation here in this particular case, the triggering elements, it says here, "Failure to adequately wet, contain and transport asbestos waste without generating visible emissions to the outside air."

Bob Ford: Right, correct.

Hearing officer: What part of that specifically did you find that A-1 had failed to comply with the rule? Was it to adequately wet, contain and transport, or did it have something to do with visible emissions?

Bob Ford: Actually, it had all 3 in that the materials that were seen by Steve Beach and Salt Lake Valley Health Department was that they were dry -- they were not wet -- for the materials that he was sampling, that he collected the samples from.

Hearing officer: At the warehouse?

Bob Ford: At the warehouse.

Hearing officer: And that's shown by photographic record here?

Bob Ford: Yes.

Hearing officer: Okay.

Bob Ford: They were not properly contained. They were open to the environment, both outside and inside the warehouse. There were additional bags there, but the materials that Steve Beach and Salt Lake Valley Health Department collected were not properly contained?

Hearing officer: They were actually loose?

Bob Ford: Yes, is my understanding.

Hearing officer: And so they were not contained?

Bob Ford: They were not contained. And, therefore, they were exposed to the air and would be considered visible emissions during our --

Hearing officer: Can you define for me visible emissions in a circumstance like that. I mean, if you don't see dust blowing around, what's visible?

Bob Ford: Basically, this material was sitting on the ground. It was not properly contained. It was not wet. And, therefore, with some type of adequate wind, or something like that, could become visible. But any type of regulated asbestos containing material that we see that is improperly contained, is not within containment, is not properly bagged, would be considered a visible emission.

Hearing officer: So material located or positioned on a surface, not bagged or contained, if a sample is taken and it's found to contain asbestos, then it's a violation of the rule to have that material unrestrained in a location?

Bob Ford: Where the public has general access, yes.

Hearing officer: What about a warehouse where the public doesn't necessarily have general access?

Bob Ford: I think my determination I made was that it was found both outside and inside. I was concerned most about what was available outside of the warehouse.

Hearing officer: So the sample taken outside the warehouse door?

Bob Ford: Yes.

Hearing officer: Okay. So your conclusion, then, is that this -- that A-1 violated because of material that was not in a containment or a container, sealed, and it was sitting in a pile combined with having samples taken by Steve Beach that showed that it contained asbestos material?

Bob Ford: Yes.

Hearing officer: Okay. Now, the leak tight containers, Greg observed a container that was dripping fluid.

Bob Ford: That is correct.

Hearing officer: One thing I'm trying to sort out there is, was the container that was dripping fluid labeled as containing asbestos waste?

Bob Ford: My understanding was that the bag that contained the fluid, the substantially fluid, was in an asbestos waste bag.

Hearing officer: Now, the third area, "Failure to label asbestos containing waste material," there's been a lot said today and in the record about the labels not being here and that they somehow fell off during transport. What's your experience with other asbestos contractors in general? How many labels tend to fall off bags of asbestos containing waste?

Bob Ford: My opinion is that it's very unusual for all of the labels to fall off. They're required to have those labels on the bags before they leave the site. There are times when I have seen that some labels have fallen off. And typically the procedure that's used by those contractors, once they've realized that, they take the waste bags off of the trailer, or however they're transporting them and put them into another location, they will then, at that time, put the labels back on. And so as they put those into a more permanent location within a warehouse or storage facility before disposal so that they will re-label those bags to make sure that they have the label on them.

Hearing officer: I noticed on the photographs that there's actually a printed area on the bags that were in that warehouse for writing with a magic marker or something to label the bags so that there's no separate label to put on. What's the standard process, or is there a standard process, for how contractors label bags? Do they typically use another stick-on label or some other means?

Bob Ford: My experience has been that generally it is some type of prepared label that's put onto the bag. I can't remember a single instance where I've seen somebody actually use a magic marker and put it on a bag that way. That doesn't mean they don't do it. I have not observed that. Typically they'll use a spray on glue, put some type of label on that or put some type of cover over it so that it doesn't blow off.

Hearing officer: Where there is a label that falls off, and I can understand how it can happen, what is the corrective action that is required under the regulations for a contractor to correct such a discrepancy?

Bob Ford: When that occurs, what typically happens is a contractor would simply put another label on and make sure that after one has blown off, and it's come to their attention that it's blown off, that they would reapply a label and put that onto the bag.

Hearing officer: If a bag is found to be unlabeled and it has not received a re-labeling is that under the rules considered to be a failure to label the bag properly if the bag is found to be at a location or is located somewhere other than where the bag was generated?

Bob Ford: Yes, it would.

Hearing officer: So it's the burden of the contractor to ensure that bags are labeled properly before they leave the site, and if a label happens to fall off and in an extreme case, a whole shipment, then the fact that the labels are not there constitute -- or do they constitute a violation of the labeling requirements?

Bob Ford: They'd be required to have the labels on the bags at all times, but the opportunity for us to discover that would probably be minimal if the contractor corrected that as

soon as possible, as soon as they are made aware of it. Unless we are in the vehicle with them or chasing them down the highway, we'd probably never be able to realize that. But it is something that technically would be a violation of the regulation from my perspective and my interpretation, but it's something that's easily correctable by the contractor as soon as they get to their final destination.

Hearing officer: Are you aware of any circumstance in the past where a contractor has had every label blow off of every bag?

Bob Ford: I have not seen that previously, no.

Hearing officer: Okay. On number 4, the citation here, or violation, is failure to dispose of asbestos containing waste material in an approved landfill. Tell me again what the reason is for your conclusion that that violation occurred?

Bob Ford: My understanding that Greg Sorenson -- It was represented to Greg that the material that was on this asbestos waste manifest was a site that Greg had visited previously and he had seen a considerable amount of asbestos waste materials, significantly more than the 6 yards that was identified in this manifest. And some of that was insulation material that had come down and co-mingled with some regulated asbestos containing materials and so all of that material should have been disposed of as asbestos-containing waste materials. And it was significantly more than 6 yards. And so the assumption was made that if indeed 6 yards was only disposed of, that there was other materials that were not properly disposed.

Hearing officer: So there's a failure to account for all the waste that was generated on a site; is that what you're saying?

Bob Ford: That's what I'm saying.

Hearing officer: Okay.

End of Tape

#3 State of Utah Air Quality vs. A-1 Restoration  
1-10-07

12:00 noon - 2:20 p.m.

Side 1

Hearing officer: Okay. I think those are all the questions I have at this point.

Mr. Nelson: Can I ask a clarifying factual question?

Hearing officer: Yes.

Mr. Nelson: Bob, if you'll look at the notice of violation under tab 2, paragraph 4(A). 4(A) is a description of the results of Mr. Beach and the samples that he took. Isn't that correct?

Bob Ford: That is correct.

Mr. Nelson: If you look at this statement there on sample one, it says in the middle of the paragraph "Sample 1 lab A36770 from outside the warehouse contained a small amount of a gray binder with 2% asbestos and brown cellulose insulation that was more than 34% of the sample." If I can refer you to tab 4.1, which is the lab report. And I believe the lab report for lab A36770, the results, is that the same sample that is referenced in the notice of violation?

Bob Ford: Yes, it is.

Mr. Nelson: And can you explain -- and I don't know whether it's a discrepancy or not, but can you explain? It says that the 5th type is brown cellulose insulation. The 6th type is pearlite and 2% crisotile asbestos in gray binder and then if you look at the percentages down below, the 5th type is 34% of the sample and the 6th type is less than 1% of the sample. Is that consistent with the statement that 2% asbestos in brown cellulose insulation was more than 34% of the sample?

Mr. Hernandez: I agree.

Mr. Nelson: I'm not asking you to agree or disagree. I'm just asking him to clarify.

Bob Ford: There appears, looking at these two different -- the NOV and the analytical results, that there is some combining of the 5th and 6th types, that there is some confusion associated with that. What the labs are required to do is they look at each of the materials and make an evaluation of each one of those materials and there's 2 different items that have greater than 1% crisotile asbestos, but there does appear to be some confusion in the write-up as far as in the NOV with regards to how much of the material and which of those materials has the crisotile

asbestos.

Mr. Nelson: Okay. Going back to the paragraph 4(A) in the notice of violation on the sample 3, lab A36772, a little further on in the paragraph there following the sample that is from inside the warehouse --

Bob Ford: Yes.

Mr. Nelson: -- it says, and I'll read from the notice of violation, "Lab A36772, from inside the warehouse, contained a small amount of a gray binder with 2% asbestos and gray cellulose insulation that was 60% of the sample." And if you look at the sample on the 2nd page under tab 4.1, the Lab A36772, it says that the 2% in the gray binder with perlite, and it says that that is the 3rd type and the 3rd type is less than 1% of the sample. Is there an inconsistency there between that sample result and the statement that it's 60% of the sample?

Bob Ford: Yes. It's my opinion that there is an inconsistency.

Mr. Nelson: I guess the last question that I would have is how do you compute the percentage of asbestos when you have a mixed sample of different kinds of materials for purposes of regulation?

Bob Ford: What is required by the laboratory is that they -- What they've indicated on both sample number 3 and sample number 1 is that they are non-homogenous and they are required to look at each one of these materials. If any one of those materials in that sample is greater than 1%, then that would make it a regulated asbestos-containing material.

Mr. Nelson: That's all the questions I have.

Hearing officer: Just a comment here. And I don't want to distort the record, but actually, when I read this section that you were just talking through, it appeared to me that the small amount of gray binder correlated with the 2% asbestos on the sample A36770. It was a rewording that perhaps was awkward, but pointed to the 6th type in the lab report. And then the other pointed to the non-asbestos brown cellulose insulation. So I don't know -- okay.

Mr. Nelson: But the brown cellulose does not contain asbestos?

Hearing officer: Did not. Okay. So I kind of didn't see a discrepancy. Although, I guess, one way of reading it could be a discrepancy. But it looked like you had minor percentage of material from the non-homogenous sample, that is that one fraction of a certain type had asbestos. The majority of the sample did not.

Bob Ford: That is correct. During the observations made by Mr. Sorenson is that some of this material was co-mingled, and one of the issues that we have is that when you have materials that may otherwise not contain asbestos, during the abatement process they get co-mingled and unless that's cleanable and you can separate into distinct -- divide that materials and it's cleanable, which typically insulation would not be perceived as such, then all of the materials need to be disposed of as asbestos containing waste materials.

Hearing officer: So even though the material considered in the whole would be less than 1%. The fact that they'd been co-mingled contaminates the entire batch?

Bob Ford: That is correct. And that is, I believe, why Dixon Information, when we give the samples to -- or in this Salt Lake County Health Department gives us samples, they make a determination is this homogenous material or is it not homogenous. And if it's dividable, that there's different materials there they will analyze each and every one of those. If any one subpart of that waste stream comes back above 1%, it would become -- all off the waste stream would become a waste material that needs to be disposed of properly as an asbestos containing.

Hearing officer: Okay. And while Fred asked that question, and I appreciate you asking that because it had been on my mind and then I'd forgotten it. Another question is, suppose material has been bagged as asbestos waste or as asbestos containing and it's in a bag labeled for asbestos in terms of the printing on the bag, but not necessarily a generator label on it, is a contractor, under the rules, allowed to later remove the material from the bag and declare it to be unregulated and simply dispose of it?

Bob Ford: My understanding is that there is a precedent set in the courts that once that material has been put into an asbestos waste bag it's reasonable to assume that that material is, indeed, asbestos waste.

Hearing officer: And so in order to determine a material in a bag that's designed for asbestos waste, if it's not asbestos containing material or asbestos waste, would each bag have to be sampled, or what would a contractor do if a bunch of stuff is put in the wrong bag?

Bob Ford: Theoretically they never should have put that in -- any material that they realize does not contain asbestos never should have been put into an asbestos waste bag.

Hearing officer: I understand.

Bob Ford: I think it'd be reasonable from my perspective, that if a sample or samples were collected from those bags and then taken to an analytical laboratory, that would help document, at least from our perspective, whether it had asbestos in it or not.

Hearing officer: Okay. Now, if a contractor had done a job, as an example -- help me here -- that I think the Arbor job was found not to contain asbestos and a bunch of bags were generated, but unfortunately the material was put in asbestos waste bags. Now, if there were traceability to all of the bags back to the Arbor project through proper labeling and control and inventory and etcetera, would it be necessary to sample the bags, or could it be determined that no asbestos was present because the material all came from a site where sampling had occurred and no asbestos was found?

Bob Ford: We had an issue associated with this in that there was an inspection performed at Arbor and said there was no asbestos materials. Subsequently, the Division received some information -- and I believe it came from A-1 -- that the laboratory results showed that it was less than 1% asbestos. And so, therefore, it wasn't a regulated amount of asbestos, but asbestos was there. And so there was some discrepancy in our findings of did this material really come from that location. I'm not sure I've answered your question, Ernie --

Hearing officer: Well, I was asking it kind of in a sense that if there was a strong certainty that asbestos was not present, but a bunch of stuff gets put in a series of asbestos waste bags and transported somewhere, there's been proper control so that the bags are traceable back to that place. Would sampling be required before they could declare the waste to be non-asbestos and then dump it into a trailer to haul away somewhere?

Bob Ford: We would assume that the waste material in the bags is asbestos, but if there was a -- I think it's reasonable that if there was some mistake that was made, that if there was a thorough methodology established with sampling materials, whether if it was all homogenous and there was some from, in essence, each bag given to the laboratory and they determined that there was not asbestos there, then I would personally be satisfied associated with whether that did not contain asbestos

material when it's gone to the appropriate laboratory and things such as that.

Hearing officer: Okay. But the sampling would be required?

Bob Ford: I would recommend to the individuals and I would require some type of sampling to document that it wasn't. Because once it goes into the asbestos bags and our inspectors see that we are working on the assumption, and we think it's a fair assumption that that material contains asbestos, it would be the burden of the contractor to document and prove to us that it did not contain asbestos.

Hearing officer: Okay. One more question. And that is, if a bag or multiple bags that are full of material and the bags are labeled with printing "Dangerous, contains asbestos material," but there's no generator tag on them, what does the Utah code and EPA require with how that bag should be treated?

Bob Ford: That bag should be disposed of as asbestos-containing waste material.

Hearing officer: Okay. And you can't just say, "Oh it isn't," and, therefore, throw it away or whatever?

Bob Ford: Nope. You would need to dispose of that material. It's reasonable to assume that the material that was in the bag is asbestos-containing waste material and that wouldn't -- we would require that that be properly disposed.

Hearing officer: Okay. I guess one other quick question. And that is, any contractor that has a discrepancy in traceability of the bags or control of them, lost the label or whatever, is it the contractor's burden to demonstrate that the material is not asbestos containing if they choose to treat it that way?

Bob Ford: I'm sorry. Could you repeat the question? I didn't follow that.

Hearing officer: Whose responsibility is it to make an affirmative and definite determination that a bag is or is not full of material containing asbestos if they're going to try to treat the bag as something other than asbestos containing?

Bob Ford: I believe that the contractor is the only one that would have care, custody and



control of that material, and he, or that entity, would be the only ones that could make that determination that this came from a specific project and whether a label blew off or failed to have labels, they were the ones that would be the most knowledgeable of where that material came from.

Hearing officer: Okay. Do you have any questions?

Mr. Hernandez: I do. I have a few. If Accelerated Design took insulation from the Arbor project, wouldn't it be that company in itself's obligation to meet your Division of Air Quality rules, and not A-1 just because they share a shop with A-1?

Bob Ford: I'm sorry. What was the name of the company again?

Mr. Hernandez: Accelerated Design.

Bob Ford: If Accelerated Design was the ones that removed the materials --

Mr. Hernandez: Two Hispanics removed the material, yes.

Bob Ford: Then they would have a responsibility to comply with state administrative rules.

Mr. Hernandez: Would that -- Applying, would a survey report showing that a residence that they took this from, an initial survey for demolition, show that which you are requiring?

Bob Ford: I guess the question I would have was did the survey report include a -- was it assumed? I mean, was there some type of analytical testing that was done to document that it did not have asbestos?

Mr. Hernandez: It's actually in the administrative record.

Mr. Stephens: You asked him a question and I'm not sure he understood exactly what you were asking.

Mr. Hernandez: I was asking whose responsibility would it be, Accelerated's or A-1, if Accelerated removed the insulation and put it in asbestos bags that they took from the shop?

Bob Ford: Accelerated would be responsible to comply with state administrative rules.

Mr. Hernandez: And A-1 is not responsible other than the inspection that they performed out at the Arbor project; is that not true?

Bob Ford: If A-1 did not have any --

Mr. Stephens: That assumes a fact that's not really in evidence here. You asked him -- and I'll make sure I got this right -- whose responsibility it would be if they put it in the bags? Is that right?

Mr. Hernandez: Yes.

Mr. Stephens: Okay. And Bob, your answer was --

Mr. Hernandez: Accelerated, I got that --

Mr. Stephens: No, let's let the witness answer.

Bob Ford: Okay. Clarification on my part. You're talking about Accelerated put the insulation in the bags, took the bags to the warehouse. Is there another step along the way that you're asking?

Mr. Hernandez: No.

Bob Ford: You're asking are they responsible for proper disposal of that? I'm not sure what the question is.

Mr. Hernandez: You said that you recommended that they get that stuff tested in the bags or find out from some source that that's not asbestos.

Bob Ford: They would have the responsibility, whoever was the contractor would have the responsibility to prove whether the material had asbestos or not.

Mr. Hernandez: Then my next question is, in the analytical asbestos report and the analytical report that A-1 turned in on that thing, would that be enough evidence to show that Accelerated -- that they can go ahead and take that material and that the Hispanics could put it in their house for insulation or take it to the warehouse?

Bob Ford: I have not seen the report that was submitted, no. Is that in the administrative record?

Mr. Hernandez: The actual analytical report is, yes. It would be tabs 4.f.1 and 4.f.2.

Hearing officer: And this is for the Arbor project?

Mr. Hernandez: Yeah, the inspection report at Arbor.

Hearing officer: And your question again, Matt. I'm sorry.

Mr. Hernandez: Could Accelerated use this inspection report to verify that this material, blown-in insulation, is not asbestos and take it to the shop?

Bob Ford: As long as those materials were the same, yes. I believe this would be adequate. My question, I guess, from a regulatory perspective, would be, why were they put into asbestos bags?

Mr. Hernandez: Okay. We'll ask that question when some other people are in here.

Bob Ford: Okay.

Mr. Hernandez: I want you to notice on 4.f.1, where it says --

Mr. Stephens: Are you asking him a question?

Mr. Hernandez: Yeah. Where it says B1 insulation, would that be the same type of material that was taken that would be in the bags at the shop?

Bob Ford: Matt, I don't know.

Hearing officer: Excuse me, which exhibit are you referring to now?

Mr. Hernandez: The exhibit on 4.f.1. The sample number B1 says, "B insulation 2400 square feet in the attic: non-detected."

Bob Ford: And my answer to the question is I did not collect the samples so I don't know, Matt.

Mr. Hernandez: But isn't blown insulation pretty much the same as blown insulation from another project?

Bob Ford: I'm assuming that the B stands for blown.

Mr. Stephens: I'm going to object to the question. We're trying to establish facts here. You're asking him to speculate between 2 different things that he neither saw either one, so --

Mr. Hernandez: Let me rephrase and ask it differently. If someone was to pull down the insulation, sheet rock, textured mud and anything that was caught in between and any other materials and pulled it down, wouldn't there be insulation, surface coat, sheet rock and any other materials that may not have been discovered during an inspection in the insulated material?

Mr. Stephens: You're not asking him something that he personally knows. You're asking him to speculate as to what might happen. That's not what he's here for. He's a fact witness.

Mr. Hernandez: He's speculated that the little white pieces of asbestos at the shop may be asbestos containing material because --

Mr. Stephens: No, he went from the lab results that showed what they were. You need to ask him questions about what he personally knows, what he saw, what he observed, whatever.

Hearing officer: I think your question, in this case, is out of order.

Mr. Hernandez: Okay. I'll withdraw the question.

Hearing officer: Let me ask a question while you're thinking about your next one. If you have multiple tenants in a place where asbestos is found to be loose and un-contained, what is your normal procedure with regard to enforcement action?

Bob Ford: We would try to make a determination who was at fault associated with that, who was the one that created the alleged violation of state administrative rules. We have done numerous inspections with A-1 Restoration and I know that this was discussed, whether it was at the compliance advisory meeting or with several phone calls I had with Matt, that there was this other company. We just haven't seen any tie between that company and who that company is, and we're dealing with A-1 Restoration on this. It does become quite challenging to try to figure out if there's loose waste sitting on the floor and there's multiple people that have the ability to have created that issue. That becomes very challenging for the Division to try to determine which entity is at fault. Typically, what we would do, is if there was multiple potential violators, then when we start doing our paperwork associated with the notice of violation or with the early settlement agreement compliance advisory, we would be sending that information out to all potential entities as we have done numerous times in the past. This appeared, from the Division's perspective, that it was A-1 Restoration and we were not aware of another company when we sent out the -- certainly when we sent out the compliance advisory, and there was no specific proof given to us during that compliance advisory process that there was another entity that was potentially at fault here.

Hearing officer: Although it was mentioned, apparently, in the meeting notes.

Bob Ford: It was mentioned to us, and then I, again, with discussions with Matt on the telephone -- I don't know whether those were before. I think those were before the compliance advisory meeting, that there was possibly another company. But we just saw no proof that this company had control of that warehouse.

Hearing officer: Okay. Matt, do you have another question?

Mr. Hernandez: Is it possible that A-1 could have missed an asbestos source in the project down at the Arbor during the inspection?

Bob Ford: Early inspection process did not assess certain materials that contained asbestos? Is that the question?

Mr. Hernandez: Or may have missed one covered up. Is it possible that any company --

Mr. Stephens: You're asking him to speculate. That's a question that we can be asking you.

Mr. Hernandez: I'm asking him as a professional. Can anyone, any inspector possibly miss material that's covered up, squished between two materials, not accessible?

Mr. Stephens: Are you asking him if he might miss it or if --

Mr. Hernandez: If it is possible for any company to miss this in an inspection?

Bob Ford: Can I go ahead and answer that question?

Mr. Stephens: Yes, go ahead.

Bob Ford: Yes. We have seen in the past that there have been inspections that have been performed during a demolition process. All of a sudden materials are exposed, and what we expect at that point in time is that those are properly handled and disposed of properly, properly assessed. If it's determined that it is asbestos, that they are properly disposed.

Mr. Hernandez: So it is possible that an inspector can miss something in an inspection?

Bob Ford: Yes, it is possible.

Mr. Hernandez: Okay. I think that's all, sir.

Mr. Nelson: I really need to follow up with one other question to clarify -- Mr. Beach, when he testified, there was reference made to a definition of asbestos containing material and I'm referring to tab 9. And the definition there says, "Asbestos containing material --" and at the end it says, "If the asbestos content is less than 10%, the asbestos concentration must be determined by point counting in PLM procedure." We've looked at the lab report Mr. Beach received on those samples. Is there any way for you as the regulatory entity, do you know whether or not that point count method was used on those samples or whether that was missed -- Let me make it two questions. Do you know from that lab report whether the point count method was used? We're at tab 4.1.

Bob Ford: It does not appear -- and being familiar with Dixon Information's analytical results, it does not appear that these were point counted.

Hearing officer: Is that necessary, based on the rule, that that be done?

Bob Ford: I would say in reading the definition, and because there is an 'or' statement there, that since it contained less than 10% asbestos as indicated in the laboratory result, these lab results should have had a point count using the PLM procedure. If I can further explain this, it's been our common practice that -- and working with Dixon Information, that the results that we see from them are very consistent between their PLM, their visual observation and their point count observation. Typically we would, meaning the Division of Air Quality, would have a point count done on these samples. It does not appear that a point count sample was taken.

Hearing officer: If a point count is not done then what are the implications for the validity of the lab results?

Bob Ford: We believe that the lab results are, indeed, accurate, that the analysis that was performed by Dixon Information is true, correct and accurate. So the 2% that are outlined in this report, and based on past experience with Dixon Information, that those lab results are accurate.

Hearing officer: So what does the point count establish, then?

Bob Ford: My understanding of a point count is basically a statistical analysis to document. What the analyst is looking at, is making a determination with the point count that statistically verifies that there is, indeed, is a above -- or a certain level of asbestos contained in those materials.

Hearing officer: So, is the point count portion of the test designed to be an assurance that asbestos is not present or to rule out a false positive?

Bob Ford: It could actually do both. If the point count shows -- let's say it's a number that's close to 1% and the point count shows that it's less, then that would not be considered a regulated asbestos containing material. If it's above, then it would verify that it, indeed, is an asbestos containing material.

Hearing officer: Okay.

Mr. Hernandez: I've got one last question. In the advisory -- I don't know exactly where it's at -- In the request for hearing, this may have been added 1 or 10.

Mr. Stephens: This is what I handed around this morning, actually.

Mr. Hernandez: If you want to see it there's an extra one there.

Hearing officer: Which document are we looking at. Is it this thing?

Mr. Hernandez: Request for hearing, yes.

Hearing officer: Dated --

Mr. Stephens: It says May 6, 2006. We think it's June 5th or June 6th.

Mr. Hernandez: Yeah. Would you read us that document?

Bob Ford: Yes. Would you like me to start with the --

Mr. Hernandez: Start with the "RE."

Bob Ford: Okay. "Request for hearing and allege that compliance was met on DAQH-0190-06. Dear Bob Ford, A-1 Restoration believes that the shop was never out of compliance. A-1 Restoration would like a hearing in this matter. A-1 Restoration also requests a split sample be sent to an independent lab and to be point counted for accuracy. Also, A-1 Restoration requests all discovery to be sent to A-1 Restoration within a reasonable time and weeks before the hearing so that A-1 Restoration can be prepared to answer your questions. Respectfully submitted, Matt Hernandez, President."

Mr. Hernandez: Thank you. Was A-1 ever given a split sample to send to an independent lab?

Bob Ford: I don't know the answer to that question. The Division did not provide that to A-1 Restoration. We did not have control of those samples. And I remember we spoke, I believe, 2 different times on the telephone. And what I asked you to do was to contact Steve Beach and he was the one that had the samples and he would be the one that would be able to provide those split samples to you. Typically when we split samples, it's at the time the samples are collected, and so this was after that time period, but we did not have the samples, and, therefore, the division could not split those samples with you or provide samples for your analysis.

Mr. Hernandez: But the compliance was sent from this agency.

Bob Ford: That is correct.

Mr. Hernandez: So this agency would be the ones that would have to have the samples or -- for us to get a hold of to send to an independent lab.

Mr. Stephens: Are you asking him a question?

Mr. Hernandez: Yes. Is that true?

Bob Ford: No, it isn't. We never had care, custody or control of those samples. Those have been done with our partner, Salt Lake Valley Health Department. They were the ones that collected the samples, submitted those samples to the laboratory, and the Division never had control of those samples, Matt.

Mr. Hernandez: As you read in the asbestos containing material definitions, less than 10% must be point counted. Did A-1 request for a point count for accuracy?

Bob Ford: In this letter, it does request that, yes.

Mr. Hernandez: Also, does it request that the videos and all other information be sent to A-1?

Bob Ford: There is a request that all discovery to be sent to A-1 Restoration within a reasonable amount of time.

Mr. Hernandez: Was that within a reasonable amount of time from the Division of Air Quality?

Bob Ford: Are you talking about the samples specifically?

Mr. Hernandez: I'm talking about the video, specifically.

Bob Ford: I don't know when you received the videos, Matt, so I don't know. I can't answer that question. December 28, 2006, is that when you received --

Mr. Hernandez: Actually, I don't know if that was when I picked them up. That's when it said it was sent out. It might have been a few days later when I got it in the mail. Would you call that an adequate amount of time?

Bob Ford: I would say that if, indeed, they were sent on the 28th and this hearing being held on the 10th, that, based on the amount of material that's within the video record, that that should be sufficient time to review that from my perspective.

Mr. Hernandez: Is it not quite a bit of time after 5-6-06?

Bob Ford: There's a time period, certainly an extensive time period, between May or June of 2006 and December of 2006.

Mr. Hernandez: Okay. I have just a few more questions. If a material in plaster is less than 1% of the plaster and that is less than -- asbestos is less than 1% of the 1% of material, would that be 1/100th of a percent of asbestos material?

Bob Ford: Okay. Let me see if I understand the question. You said that there's material in this --

Mr. Hernandez: So you have material. In it, there's several parts of material. One of the material is less than 1% and there's 1% or 1 and a half percent of material in that less than 1% of material. Is that 1/100th

of a percent of asbestos, or is it different?

Bob Ford: And we're talking about the amount of asbestos in that material, correct?

Mr. Hernandez: Yes.

Bob Ford: My understanding is when there is discreet layers that are identifiable, that each one of those layers needs to be identified and analyzed. And so if there's any component associated, with the exception of a wall system, but if there is any component that's part -- that those need to be analyzed separately, and if any of them are greater than 1%, then that would be considered asbestos containing materials.

Mr. Hernandez: Can you read from the regulation where that says that? I've never read that before.

Bob Ford: You know, I don't believe I can.

Mr. Hernandez: Is it possible it's not in the regulation?

Bob Ford: It is possible.

Hearing officer: Is there anything in the regulation about co-mingling of asbestos and non-asbestos containing material? We asked a series of questions on that earlier to you.

Bob Ford: You know, Ernie, there is, but I don't know if I could come up it without studying this carefully.

Mr. Stephens: That question actually was asked of Greg Sorenson.

Bob Ford: Oh, I'm sorry. I thought it was -- I'm getting a little muddled right now.

Mr. Stephens: Can I ask a question? Maybe it'll get right to it.

Hearing officer: Yes, please.

Mr. Stephens: Is there a definition for asbestos waste in the regulation?

Bob Ford: Yes, there is.

Mr. Stephens: Okay. Would you please read that?

Bob Ford: "Asbestos waste means any waste that contains asbestos."

Mr. Hernandez: Where are we at?

Mr. Stephens: We're on page 3 of 14 of the regulation, about the third --

Mr. Hernandez: 3 of 14?

Mr. Stephens: Yeah, 3 of 14, about the third definition down, asbestos waste.

Mr. Hernandez: Asbestos, got it.

Bob Ford: "Asbestos waste means any waste that contains asbestos. This term includes filters from control devices, friable asbestos containing waste material and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing."

Mr. Stephens: Does that answer your question?

Hearing officer: I think it does. Let me reflect back what I think I heard. That was asbestos waste as defined in the Utah Administrative Code, and I would assume in the EPA regs, does not have a minimum threshold of percent of asbestos co-mingling in a waste environment and results in the entire thing being classified as asbestos waste. Is that correct?

Bob Ford: Yes.

Mr. Hernandez: Only if it comes from a regulated project. Is that not correct?

Bob Ford: If we have a layer that has a regulated amount of asbestos containing waste material. Are you talking about a less than NESHAP sized project? Is that what you're getting at. I'm not sure what the question is, Matt.

Mr. Hernandez: Well, he's asking the question. I'm just saying that this asbestos waste is from a regulated project. Asbestos waste can only come from a regulated project.

Mr. Stephens: Are you asking him a question?

Mr. Hernandez: No. I'm trying to explain.

Mr. Stephens: Okay. He's the one asking questions, and he's the one answering.

Hearing officer: Let me try to ask the question I think Matt's getting to, but since it's my question -- As I read this, asbestos waste means any waste. It doesn't say any regulated waste.

Bob Ford: That is correct. That's what the definition states.

Hearing officer: And in the event that there has been a mishap or an oversight or an unexpected discovery that results in material that contains asbestos inadvertently even, it's still asbestos waste if it contains asbestos?

Bob Ford: That is correct. And it would need to be properly disposed of. We've had several incidents on other projects where, unfortunately, waste had been co-mingled, or asbestos material has been co-mingled with waste streams and the entire structures have had to be disposed of as asbestos containing waste materials.

Hearing officer: Okay. Matt, any other questions?

Mr. Hernandez: The asbestos waste material, would that apply to Accelerated being a non-certified asbestos company?

Bob Ford: I'm not sure what the question is. Would they be --

Mr. Hernandez: Would they fall under this thing of definition, like A-1 Restoration would, as part of the R307-801? We're --

Bob Ford: Any company would be required to follow state administrative rules. And so whether they were certified or not would be immaterial. They would be required to comply with regulations.

Mr. Hernandez: I don't have anything else.

Hearing officer: Any others?

Mr. Stephens: May I ask just a couple follow up questions?

Hearing officer: Yes. Go ahead, Chris.

Mr. Stephens: The first one is how long does the Division have after a violation has been identified to issue a notice of violation?

Bob Ford: My understanding is that we have one year to do that.

Mr. Stephens: And once a notice of violation has been issued, how long does it -- what's the amount of time it has to have held a hearing? Are you aware?

Bob Ford: I'm not aware.

Hearing officer: Okay. With no further questions, then, we've been at this for 4 hours almost. I think it's time to take a recess for about 30 minutes. Matt, apologies to your people, who, I think, are next to testify. But I'm going to have to get a little bit of lunch and I'd recommend others do, too. Could we be back here by 1:30?

Mr. Hernandez: I don't see a problem. I don't think my witnesses have a problem?

Hearing officer: Would that be okay?

Mr. Hernandez: Yeah, that would be fine.

Hearing officer: If it is a problem for you we could take a 5 or 10 minute break and come back and gut it through. At the rate we're going, though, I hate to be running low on glucose here, although I'm not that big --

Mr. Hernandez: My witnesses are going to be pretty fast, but I can tell that food would be a good thing, so let's go ahead and take --

Hearing officer: Would that be all, right?

Mr. Stephens: Sure, that's fine. I don't have a problem with that at all. I did notice -- I think we're talking about appendix A from the Dixon Information. I think that was a copying error. I could find out during lunch and bring up a copy if it's actually there. Is that fine?

Hearing officer: If you can I think that would be helpful because I'm concerned about the validity of the sample as it's currently provided in the record.

Mr. Stephens: That's fine. I'll see what I can do about that.

Hearing officer: Or of the report, excuse me.

Mr. Hernandez: Is appendix A just something that they put in that you would call Dixon and they would send to you, or --

Mr. Stephens: Well appendix A refers to -- my understanding is refers to the federal -- it's an appendix of the federal regulations, and according to what the report should look like -- although, I have to admit, I can't visualize it myself, but I would expect that's supposed to be part of -- some type of document is supposed to be included in there, but --

Hearing officer: Bob, the question, basically, is the Dixon report emphasizes that the report is not complete unless appendix A is there. That's in the lean paragraph of the Dixon reports. The copy in our administrative record does not have that appendix with it, and, therefore, it's not a complete report from Dixon. And that's what I asked the question about some time ago.

Mr. Stephens: I'll see what I can do about that.

Hearing officer: Is it okay with the recorder if we take a break for about half an hour?

Recorder: That would be great.

Hearing officer: Okay. Thank you.

Side 2

Hearing officer: We have a follow-up item from a request just before lunch and you want to put on your mic there and -- can you hear me okay?

Recorder: Yes, I can.

Mr. Stephens: Me as well?

Mr. Hernandez: How about me?

Recorder: Yes.

Hearing officer: Okay. For the record, the administrative hearing for A-1 Restoration on January 10, 2007, is reconvened after lunch at 1:40 p.m. And Chris Stephens has done some work over lunch and can you report what you found?

Mr. Stephens: Yes, I can. I don't know if it's necessary to recall the witness, Steve Beach, or not. The question goes to appendix A of the Dixon Laboratory's reports. We did some investigation downstairs. Their standard form is -- This is from a different case, different file. Of course, this is an original and appendix A is on the reverse side of that page. And then this one says page 2 of 2 even though there's an intervening page there. We've looked at the original file downstairs for A-1 Restoration. When the copy was made, just the front page, page 2 of 2 -- this one was left blank and then here's page 2 of 2. So we can handle this. We made copies of the appendix A, or we can call Mr. Beach to talk about what his original report had before it was sent to us. Or if it's sufficient, to just simply give copies to everybody here.

Mr. Hernandez: Did that appendix A come from another project?

Mr. Stephens: Yes. This is a form, though, from Dixon.

Mr. Hernandez: Then I object.

Mr. Stephens: Well, maybe I didn't explain it correctly. This is a form that Dixon -- And I believe we can establish that the form that Steve Beach originally had has the appendix A on the back and that it was miscopied when it was --

Hearing officer: Okay. Why don't you recall Steve because of the split responsibility here between the Health Department and DAQ. DAQ doesn't have the original, but Steve has personal knowledge of it and he can then clear up whether the appendix was on the back and whether it's identical to what the copy is that they've made from the other document. It's standard form language probably.

Mr. Hernandez: Shouldn't it still be -- have been submitted into this record to be legal?

Hearing officer: It does, but it's not necessarily harmful to have it missing if we can get a copy and see what it says. Okay? So go ahead.

Mr. Stephens: We'd like to recall Steve Beach please.

Mr. Nelson: Can I ask just another question though? Is it possible for the original --

Mr. Stephens: That's what I'm about to ask him.

Mr. Nelson: Oh, you have the original?

Mr. Stephens: Yeah.

Mr. Hernandez: That's what we needed.

Hearing officer: That solves the problem, doesn't it then?

Hearing officer: Does that solve the problem?

Mr. Hernandez: That solves everything. We just --

(Background talking)

Mr. Stephens: You've got to be sworn because you're re-testifying, so. Do we need to re-swear him?

Mr. Nelson: He's already been sworn.

Mr. Stephens: Okay. All right. Steve, do you have an original copy of the Dixon Information lab

report from August 23, 2005?

Steven Beach: Yes, I do.

Mr. Stephens: Okay. And does, on the back of the first page, does it contain appendix A as required?

Steven Beach: Yes, I do, it's right there.

Mr. Stephens: All right. And does it contain the full report to the best of your knowledge, all the pages?

Steven Beach: Yes, it does.

Mr. Stephens: Okay. So we'd just like to point out for the record, then, that the copy that was sent to the Division of Air Quality appears to have omitted appendix A, but it was in the original report from Dixon Laboratories.

Hearing officer: Okay. Would Steve please inspect appendix A from the report in his file compared to the copies you've made to determine that it is standard boiler plate or other language so that we can look at a copy of it?

Mr. Nelson: Was this made from the original?

Mr. Stephens: I made this from this other --

Steven Beach: I made this from the original.

Mr. Stephens: You made that from the original ones I brought in that I was going to hand around, or from a different project.

Hearing officer: Yeah. Well, that's why I want to make sure they're the same before we go assuming they are.

Steven Beach: Yes. It looks like it's the exact same one.

Hearing officer: Okay. Matt, are you okay using the copies?

Mr. Hernandez: I've received them. They're the exact same one, every single one. I have no objection.

Hearing officer: Okay. Would you like to add those to the record, then?

Mr. Stephens: Yes. We'd just like to move that those be admitted to the administrative record as well.

Hearing officer: Okay. Approved.

Mr. Stephens: Thank you. There you go.

Hearing officer: Thank you.

Mr. Stephens: Okay. That's all we have.

Steven Beach: Okay.

Mr. Stephens: Thank you. Unless there's any questions from anyone else.

Hearing officer: I have no questions.

Mr. Hernandez: I have just one question --

Mr. Stephens: Steve, hold on a second.

Mr. Hernandez: -- if you can hold on one second. Method of analysis and limit of detection, could you read the second paragraph under methods of analysis and limitation? There are 2 methods.

Steven Beach: Sure. "There are 2 methods of analysis of asbestos in a bulk test sample. Visual estimation is the most sensitive method. If an analyst makes a patient search of 0.1% or less, asbestos can be detected in a bulk sample."

Mr. Hernandez: What does this mean to you?

Steven Beach: Well, it just says there's 2 methods to analyze asbestos.

Mr. Hernandez: What are they?

Steven Beach: Well, there's the point counting, or there's the other one, the microscopy, and either one could be used to approve that it's asbestos.

Mr. Hernandez: Okay. One more question. Is it not true that TEM is the only accurate way to identify asbestos in an asbestos containing material?

Mr. Stephens: You used an --

Steven Beach: I have no idea.

Mr. Stephens: -- acronym. What is the acronym?

Mr. Hernandez: TEM is a --

Mr. Stephens: I don't see it anywhere on here, so what does that mean?

Steven Beach: Yeah, I don't see it either.

Mr. Hernandez: It's not. It's an actual -- another inspection. It's electronic microscope inspection



using an electronic microscope and it's the only thing that's 100% --

Mr. Stephens: Okay. That's what you're stating, but you're asking him a question.

Mr. Hernandez: Yeah. Is that true about TEM?

Steven Beach: I have no idea.

Mr. Hernandez: And then no more questions.

Hearing officer: Thank you, Steve.

Steven Beach: Thanks.

Hearing officer: Anything else, Chris?

Mr. Stephens: Nope, that's it. Thank you.

Hearing officer: Okay.

Mr. Nelson: You asked a question whether you can present evidence other than the administrative record. The answer is, yes, you can present evidence other than the administrative record. It has to be relevant to the notice of violation.

Mr. Stephens: Okay.

Hearing officer: Would you like to proceed?

Mr. Hernandez: Am I up?

Hearing officer: Yes.

Mr. Hernandez: Yes, I'd like to proceed. All right, now, I'd like to call Clint Sugden. I believe I made copies. When I introduce stuff, I believe I made copies for everybody, so.

Mr. Stephens: Should he be over on the side next to the --

Hearing officer: Might be better.

Mr. Stephens: Okay.

Mr. Hernandez: We ready?

Hearing officer: We're ready. Clerk, could you order --

Recorder: Do you swear or affirm to tell the whole truth, nothing but the truth?

Clint Sugden: I do.

Mr. Hernandez: Mr. Sugden, what is your current occupation?

Clint Sugden: I'm an inspector, asbestos inspector for A-1 Restoration.

Mr. Hernandez: Are you familiar with the asbestos project and demolition project at 454 West 100 South, South Jordan?

Clint Sugden: I am, I done the inspection on that project.

Mr. Hernandez: Was there a --

Hearing officer: Excuse me. Clint, could you speak up just a little bit? I'm a little hard of hearing from too many years in power plants.

Clint Sugden: Yes, I did the inspection on that project.

Hearing officer: -- years in power plants, okay?

Clint Sugden: I hear you.

Mr. Hernandez: Mr. Sugden, is this your inspection report?

Mr. Stephens: Which one are we talking about?

Mr. Hernandez: The A-1 inspection report at 454 West 100 South --

Mr. Stephens: Is it in the administrative record?

Mr. Hernandez: No. That's the one that we thought was in the administrative record --

Mr. Stephens: Okay. Do you have a copy?

Mr. Hernandez: But when we was looking it up -- I got copies for everybody. Could I introduce it into evidence?

Hearing officer: You'll need to if you want to talk about them.

Mr. Hernandez: Okay. Can I introduce it as Exhibit A-1-1.

Hearing officer: Fine.

Mr. Hernandez: I'll write it down so --

Hearing officer: These are different than this packet of material you gave us earlier?

Mr. Hernandez: Yes. This would be the actual inspection report that we did. Anybody else need one?

Mr. Stephens: Now, is it your contention that these were supposed to have been in the administrative record?

Mr. Hernandez: I thought they were.

Mr. Stephens: Because we've never seen these before, so I have no opportunity to even know

what I'm looking at.

Mr. Hernandez: Well, I'm introducing it now as --

Mr. Stephens: Well, yeah, but my point is to give everybody a chance to look at it ahead of time. I do recognize some of these.

Mr. Hernandez: They were actually submitted to the Division of Air Quality. Why it was never put in, we don't know. I thought it was in there. When I started looking, that's when I --

Hearing officer: Do you have a cover letter that you used to transmit this to the Division of Air Quality?

Mr. Hernandez: I don't. We actually took it up to the compliance meeting, I believe, is where the first time it was shown.

Clint Sugden: Yeah, we gave them a copy when we went and talked to Greg and Bob.

Hearing officer: Let me just ask one thing. This information, obviously an inspection report related to the Pheasant Hollow demolition area, that I gather you feel is relevant to one or more of the violation items?

Mr. Hernandez: Correct.

Hearing officer: Could you quickly state which items you think it's relevant to so I can determine if this is relevant to admit?

Mr. Hernandez: It's the same project that Greg Sorenson did the video on that says that material may have come from -- that the blown-in insulation may have come from that one and he was trying to establish that it may have come from there. We're going to show that it didn't.

Hearing officer: Okay. Well, Chris, do you have an objection to having this admitted?

Mr. Stephens: No -- Well, I see one or two pages that came from the file here. These would be at 4.f.2 of the administrative record. There's 3 pages that appear to be from a partial.

Clint Sugden: Yeah, they just didn't touch the front two, it looks like.

Mr. Stephens: Well, that's if they have them.

Clint Sugden: Yeah.

Mr. Hernandez: 4.f.2? Nope, that isn't 4.f.2.

Mr. Stephens: 4.f.2 is the Arbor --

Hearing officer: That's the Arbor inspection.

Mr. Hernandez: Yeah, the Arbor inspection.

Mr. Stephens: Oh, is it? Okay. Well then I don't think we've seen this at all.

Mr. Hernandez: No. And I thought it was in there. I was confused too.

Hearing officer: Very well. The exhibit that Matt has requested be admitted to the record, I don't see any problem. So consider it so admitted. All right, and could it please be added to the record. You're maintaining the record, is that right? Who's maintaining the administrative record at this point?

Mr. Stephens: I can do it. That's fine.

Hearing officer: Whatever works, okay?

Mr. Nelson: What was the number we put on that?

Mr. Hernandez: Exhibit A-1-1. This is just so I can follow him because I don't know where he stopped.

Hearing officer: Thank you. Ok, please proceed.

Mr. Hernandez: I'm going to have to share this with him. I thought I made enough copies, but on this one I didn't. Could you please read DMT-12?

Clint Sugden: DMT-12 was a sample taken of a textured mud.

Hearing officer: Do you mean DMT or DTM?

Clint Sugden: DTM, yeah.

Mr. Hernandez: DTM-12 --

Clint Sugden: DTM-12 is textured mud -- downstairs. It come back 7% chrysotile asbestos.

Mr. Hernandez: Okay. Can you please read UFC3?

Clint Sugden: It's an upstairs surface coat. 5% chrysotile in the surface coat. Same thing, textured mud and surface coats are the same thing.

Mr. Hernandez: Can I bring your attention to administrative record 5.k.1, Mr. Sorenson's testing results from Dixon Information?

Hearing officer: And which one --

Mr. Hernandez: Yeah, that one right there.

Hearing officer: Okay.

Mr. Hernandez: And I'm referring to LAB DAQ169, field 2. Can you tell me how much percentage of asbestos is in --

Clint Sugden: The same amount that I picked up in my sampling of the basement textured mud surface coat.

Mr. Hernandez: So your sampling and Greg's sampling are exactly the same?

Clint Sugden: They match, 7%.

Mr. Hernandez: That's exactly, the same.

Mr. Stephens: No, you're leading him. He's got to answer.

Clint Sugden: Yeah, they match exactly the same, 7%.

Mr. Hernandez: Okay. I want to take you to Steve Beach's sample results.

Mr. Nelson: 4L.

Mr. Hernandez: That would be 4.L. Can you read LAB A36770, insulation outside? Can you read the percentage of asbestos indicated there?

Clint Sugden: Well, it says this sample contains 6 types of material. The first type is a white paint. The second type is 1.5% chrysotile asbestos in a white mastic unidentifiable plaster, and the third type is a white gypsum plaster.

Mr. Hernandez: You've got to speak up loud and clear.

Clint Sugden: The fourth type is a brown vermiculite, the fifth type is brown cellulose insulation, the sixth type is a perlite and 2% chrysotile asbestos in a gray binder.

Mr. Hernandez: Are these sample results the same as the sample results in the other 2 inspection reports?

Clint Sugden: No. These sample results are completely different, and if this material was that same material it would show a 5-7%, not 1.5 or 2 --

Mr. Stephens: Okay. Now we're only talking about what you're seeing there, not what some other one might be, so answer the question.

Mr. Hernandez: To compare between all 3 that we're talking about, three reports. Are there the same type of materials?

Clint Sugden: No. They're not even the same types of materials.

Mr. Hernandez: So --

Clint Sugden: I mean, this has got 6 different types in it. The other one has 3 types in it.

Mr. Hernandez: So as an inspector, are you saying that this material that Steve Beach has sent to Dixon is not the same material in yours and Greg Sorenson's report?

Clint Sugden: No. They don't match. They don't match the detection limits.

Mr. Hernandez: How about the types?

Clint Sugden: The types don't even match.

Mr. Hernandez: Okay. Let's move on to this inspection report out at Arbor. Were you the project manager for any asbestos removal out at the Arbor project?

Clint Sugden: Yes, I was.

Mr. Hernandez: How many houses was out at the Arbor project?

Clint Sugden: There was 28 to start -- another 6, so 34.

Mr. Hernandez: 34 total residences out at this Arbor project. So there was quite a bit of salvage to be obtained --

Mr. Stephens: You're leading him. Ask him direct questions.

Mr. Hernandez: Is there salvage out at the Arbor project?

Clint Sugden: These were a lot newer houses. There was lots of things to be salvaged and retained out of that.

Mr. Hernandez: Did Accelerated Design and Construction ask you if they could get permission to go out on the Arbor project?

Clint Sugden: They did.

Mr. Hernandez: What was your answer?

Clint Sugden: Yeah, to go ahead and let me send them to a house that I know where there's no asbestos and an inspection has been done.

Mr. Hernandez: Did you see Chester, Juan and Jose out at this house, 454 West 10000 South in South Jordan?

Clint Sugden: Yes, I seen them there. And I also directed them there to go get the insulation out of

that house because we'd sampled it already.

Mr. Hernandez: So then Juan, Jose and Chester removed the insulation out of that house?

Clint Sugden: Yes. The only thing they did do that I didn't know was the asbestos bags. I wish they wouldn't have put it in asbestos bags, but that was all they had and they did use those.

Mr. Hernandez: What were Juan and Jose after out of the house?

Clint Sugden: The blown in insulation to re-insulate their house more efficiently on the west side.

Mr. Hernandez: So they took this insulation and put it in their house?

Clint Sugden: Actually in their house, yes. Some in the shop and some in their house.

Mr. Hernandez: What was the stuff at the shop doing there?

Clint Sugden: Waiting to go into their house, and I think they'd got too much and they couldn't fit it all in there and didn't know what to do with it.

Mr. Hernandez: Do you know where Juan and Jose are now?

Clint Sugden: I have no idea.

Mr. Hernandez: Do you believe they're in Mexico?

Clint Sugden: Quite possibly, yes.

Mr. Hernandez: Do you believe that they may have been illegal aliens?

Clint Sugden: Maybe.

Mr. Hernandez: You don't know?

Clint Sugden: I don't know for sure, but maybe.

Mr. Stephens: Relevance -- if I checked on that one, relevance -- it doesn't make any difference where they're from.

Mr. Hernandez: Yeah, no real relevance. There was an inspection done at our shop by the Health Department on August 18th. Did you visit the shop shortly afterward?

Clint Sugden: I did.

Mr. Hernandez: Did you take -- as an inspector, did A-1 request that you take some samples?

Clint Sugden: They did and I pulled an additional sample of the material. Took the Datacam for analytical.

Mr. Hernandez: I'd like to introduce this analytical that Clint took from Datacam from the blown insulation from the shop.

Hearing officer: So this is a sample from a bag?

Clint Sugden: Actually from our trailer, the same place that Steve Beach took his sample from, I took mine from.

Mr. Stephens: I don't believe Steve Beach said that he took a sample from the trailer.

Mr. Hernandez: He actually said he took his from in front of the shop. Where was yours taken from?

Clint Sugden: From the trailer.

Mr. Hernandez: From the trailer? Is the trailer the same blown insulation?

Clint Sugden: The same stuff that was on the ground.

Mr. Stephens: That calls for speculation. I'm going to object to that question.

Hearing officer: Sustained. I think you have established, based on questioning that you just did, that the sample taken at the storage facility or your shop, I guess, you're calling it, was taken from the trailer. And now we're going to look at what those results were.

Mr. Hernandez: Actually yeah, from Datacam. I have it right here.

Mr. Stephens: I believe I've got one. Is this what you're talking about?

Mr. Hernandez: That's it. I've got the whole thing.

Mr. Nelson: Was it in this packet that was handed out?

Mr. Stephens: It was and the things that I believe, also --

Mr. Hernandez: We added it afterwards, right?

Mr. Stephens: I think so. This is what you sent to me.

Mr. Nelson: Okay. Here it is. Is this it?

Mr. Hernandez: Yes, that's it.

Mr. Stephens: I made copies for everybody this morning of those.

Mr. Hernandez: I've got to find mine now.

Hearing officer: Okay. So this is an analytical report from Datacam dated August 22, 2005, and there's a control number on the top of it that ends in 343ARX.

Clint Sugden: I believe that's the lab's number.

Hearing officer: That's the lab thing. Is that what you're talking about?

Mr. Hernandez: Yeah. I would like to introduce --

Mr. Nelson: It's already been introduced.

Mr. Hernandez: Yeah, but this has that sheet, the same boiler plate stuff that -- No, this stuff here -- the same thing that we were doing over Steve Beach's that you allowed into --

Mr. Nelson: Is this it?

Mr. Hernandez: Yeah. One was actually two of them. It should all be 4 pages. It would actually be these 4 pages.

Hearing officer: I'm getting confused, now, on what's a -- Are you adding a page to the thing you handed out earlier today?

Mr. Hernandez: Yeah. What's he'd got is -- I don't know if he got all 4 pages.

Mr. Stephens: I gave him everything that you had sent to me earlier.

Mr. Hernandez: There's an analytical blank.

Mr. Stephens: 1, 2, 3, 4.

Mr. Hernandez: That's the chain of custody.

Mr. Nelson: Okay. You do not have the -- yeah, you have a chain of custody. So the only one we're missing is the front page.

Mr. Hernandez: Is this front page and basically --

Mr. Nelson: So is there any objection to us adding a copy of this front page to the record?

Mr. Stephens: I don't believe so. Let me go through this stuff really fast. I don't think so at this point.

Hearing officer: Let the record note that we did add the sheet that the title at the top "Analytical report analysis of bulk samples for asbestos from Datacam" to the other pages, to the report on the trailer dated August 22nd. Okay.

Mr. Hernandez: Mr. Sugden, can you tell me, is this your chain of custody?

Clint Sugden: Yes, it is.

Mr. Hernandez: Can you explain number 6, request for analysis?

Clint Sugden: That is just --

Mr. Stephens: Where are you again?

Mr. Hernandez: Chain of custody.

Mr. Stephens: Chain of custody. Okay. That's fine.

Clint Sugden: That's my sample number, the material I dropped off and what I wanted it analyzed for.

Mr. Hernandez: What day did you collect the sample?

Clint Sugden: 8-19-2005.

Mr. Hernandez: And it was received that same day?

Clint Sugden: Uh-huh.

Mr. Hernandez: What does the report -- Let's go to the report. What does the report say to you?

Clint Sugden: It says less than 1% chrysotile.

Mr. Hernandez: In your opinion, do you believe this material to be a regulated asbestos material?

Clint Sugden: No, I don't. It's less than 1%.

Mr. Hernandez: Why do you agree that this is a non-regulated material?

Clint Sugden: Regulations state anything less than 1% is not regulated by the State of Utah.

Mr. Hernandez: Would this be considered a miscellaneous material?

Clint Sugden: Yes.

Mr. Hernandez: In normal sampling, would you take one or more samples?

Clint Sugden: Just one.

Mr. Hernandez: Just one sample. Okay. I want to move onto Steve Beach's inspection report. It would be tab 4.I. You've seen this when I brought it up the first time. Do you believe that after reading this report, would this be asbestos containing material?

Clint Sugden: No, because --

Mr. Stephens: What are we talking about, stuff in here or in Steve's report?

Clint Sugden: In Steve Beach's.

Mr. Stephens: Okay.

Clint Sugden: In Steve Beach's analytical, they have taken and split these materials down by

layers. These materials are composite layers. Overall, if you took all the material, this would be less than 1. Steve Dixon usually puts at the bottom of his report, "Overall materials less than 1," but they had them split it. This should have been analyzed as a composite, not split.

Mr. Hernandez: Okay. What are you basing that on?

Mr. Stephens: Well, that's fine.

Mr. Hernandez: Do you believe that Greg Sorenson and/or Steve Beach instructed Dixon Information.

Hearing officer: That calls -- I think that's not an appropriate question. I'm sorry.

Mr. Hernandez: I withdraw the question. If you were doing the report with these analyses, would you call that material asbestos containing material?

Clint Sugden: No, I wouldn't because -- and I would ask the lab why they didn't illustrate or composite sample it. That's obviously composited material.

Mr. Hernandez: Did you composite your sample?

Clint Sugden: Yes, I did.

Mr. Hernandez: Did it come back less than 1%?

Clint Sugden: Yes, it did.

Mr. Hernandez: Okay. Let's move on. Out at the Arbor project when Juan and Jose removed insulation from the ceiling to use in their house, how did they transport these bags back?

Clint Sugden: In their blue Ford truck.

Mr. Hernandez: Did they take --

Clint Sugden: They tarped it. They put the bags in the truck and then put a tarp over it and took them to the shop.

Mr. Hernandez: I don't know if you know the answer to this. Did they do this on their own time or did they do this on Accelerated time and construction time?

Clint Sugden: I believe this was done on their own time because it was for them, not for us. It wasn't work or what we wanted them to do. It was something they wanted, so they did it on their own time.

Mr. Hernandez: Let's go out now to the Pheasant Hollow job site where Greg Sorenson had shown up for an inspection. Was water hooked up at that site?

Clint Sugden: Yes, it was.

Mr. Hernandez: Was amended water used during the removal of the asbestos?

Clint Sugden: All materials, yes.

Mr. Hernandez: Was it adequately wet?

Clint Sugden: Yes, it was, soaking wet.

Mr. Hernandez: Was the insulation adequately wet?

Clint Sugden: Yes, it was saturated, totally saturated.

Hearing officer: Excuse me. But I don't remember in any of the notice of violation any statement about their not being adequate wetting at the Pheasant Hollow site.

Mr. Hernandez: What we're trying to show is how compact -- and I'll put this in exhibit so he can see if this is how wet the material was -- how compact the material gets, the blown insulation, that this thing could have -- like when it's all fluffed up, a whole bag, and this is how much when it's adequately wet.

Mr. Stephens: Okay. I've got a problem here, because we have no idea what that would look like before it was wet. What can you base it on?

Mr. Hernandez: I actually have 2 full bags and a jug of water to do the demonstration. We can do it now with Clint Sugden if you'd like.

Mr. Stephens: I guess I'm a little confused where this is headed because I'd agree there's nothing in the notice of violation that's talking about whether or not these things were adequately wet.

Mr. Hernandez: I'm saying that this insulation did not come from -- Well, the asbestos insulation come from a regulated job. We're proving that his calculations with the stuff on the floor and so much thickness and he did the cubic yard, that he's way out of whack and that there's no possible way that the blown insulation in the shop come from that job. And we're just wanting to show that when we did our bags, 187 bags is way more than enough bags to take all that material and put it in Mont's trailer for disposal.

Hearing officer: How long will this take, because this thing's going on a lot longer than I figured it would anyway.

Mr. Hernandez: If the prosecutor would just say that it would shrink considerably, I would --

Mr. Stephens: I'm not willing to concede that. We saw here on the television, we saw here on the videotape shortly, a substantial amount there. It's going to be up to the hearing officer to --

Mr. Hernandez: But that was before it was wet. He gives you an inaccurate description of the material.

Mr. Stephens: That's your side. I understand that, but you're asking us to extrapolate from that baggie for all the entire picture that we saw there. I'm not sure that's possible. I don't know that that's a --

Hearing officer: What I'm trying to establish here is whether or not there was adequate and appropriate control and tracking and inventory management of asbestos waste, not asbestos containing material, but asbestos waste from the Pheasant Hollow project as well as other projects that could have resulted in loss of control and subsequent release material within the storage unit. I understand how insulation shrinks when you wet it down. I don't think I need to see a demonstration.

Mr. Hernandez: I just wanted to make that point. I can go --

Hearing officer: I would suggest to you, though, that while the shrinkage of the volume can be a supporting argument about the reasons for the much smaller volume, I frankly have not seen anything to indicate a good chain of custody of the material that have ultimately wound up in your landfill.

Mr. Hernandez: In my shop, you mean?

Hearing officer: Well, and I also have a question about your shop because I'm confused about how a shop can be used for storage of hazardous material without proper permitting, but I don't know the answer to that, whether a permit's required or not. But where I'm at is that I'm trying to establish whether material was properly handled. The insulation, yes, it'll reduce in volume.

Mr. Hernandez: If I can proceed, I think I can make it pretty clear to you.

Hearing officer: All right. Let's go and let the record show that I understood the concept of the shrinking volume on the insulation when wet down, and, therefore, I chose not to see the demonstration of how much it would shrink.

Mr. Hernandez: Okay. Was the material adequately wet?

Clint Sugden: Yes, it was.

Mr. Hernandez: Did you help during the bag removal of the insulation?

Clint Sugden: Yes, I did.

Mr. Hernandez: Did the insulation go straight to Maughn's trailer?

Clint Sugden: Yes, it did.

Mr. Hernandez: Did it ever go to the shop?

Clint Sugden: No. There was too much. It went straight to the trailer.

Mr. Hernandez: And you were right there? You seen this?

Clint Sugden: On every load. We dumped every load in the trailer.

Mr. Hernandez: I want to take the manifest from the Pheasant Hollow. I'll see if I can find that. It would be 4.h. Do you see where the 6 yards is circled?

Clint Sugden: Yes, I do.

Mr. Hernandez: Is that written by A-1?

Clint Sugden: No, it's not.

Mr. Hernandez: Who writes the yards on that?

Clint Sugden: Mont Jensen.

Mr. Hernandez: From All Services?

Clint Sugden: From All Services Transporter.

Mr. Hernandez: So A-1 only writes 187 --

Mr. Stephens: You're leading him.

Clint Sugden: Yes.

Mr. Hernandez: So the 6 yards has nothing to do with A-1 Restoration, but All Services puts it on there?

Clint Sugden: All Services, yes.

Mr. Hernandez: Does All Services alter our manifests?

Clint Sugden: Yes, they do. They're adding 6 yards to our manifest for some reason. Why they

come up with that, I have no idea.

Mr. Hernandez: So this is not A-1?

Clint Sugden: No. And 187 bags would be more than 6 yards.

Mr. Hernandez: Thank you.

Hearing officer: Excuse me. You just said that 187 bags would be more than 6 yards.

Clint Sugden: Yeah, just based on my own experience of how many yards 187 bags would take up.

Hearing officer: What was your personal knowledge of how much waste was generated under this compliance manifest and shipped via your transporter to the final destination? Was it 187 bags, or was it 6 yards?

Clint Sugden: 187 bags.

Hearing officer: It was 187 bags.

Clint Sugden: Correct. The 6 yards was added in there by All Services. I don't know why he does that.

Hearing officer: Well then, if you turned over 187 bags to him and he said he only got 6 yards, what happened to the rest?

Mr. Hernandez: He takes the whole trailer down. Are you asking him, or do you want me to tell you?

Hearing officer: I'm asking the witness.

Clint Sugden: He's taking the whole trailer down and, for some reason, just putting this number on there. I have no idea. He's just maybe taken and per manifest, guessing here or there or that. I don't know where he's coming up with the 6 yards.

Mr. Hernandez: How many projects go in a semi?

Clint Sugden: Depends.

Mr. Hernandez: 30?

Clint Sugden: Could be 30, could be 10.

Mr. Hernandez: Depends on how big the project?

Clint Sugden: It depends on how big the projects are, yeah.

Mr. Hernandez: So the 6 yards is just a guess so he can get the paperwork through?

Mr. Stephens: You're asking him to speculate.

Mr. Hernandez: Withdrawn. What do you think he puts the 6 yards there for?

Clint Sugden: I have no idea.

Mr. Stephens: That's asking him for speculation.

Mr. Hernandez: Withdrawn. Did you take these -- Were you part of the people that took this 187 bags to the trailer?

Clint Sugden: Yes, I was.

Mr. Hernandez: Where was the trailer parked?

Clint Sugden: Out in North Salt Lake.

Mr. Hernandez: Nowhere near the shop?

Clint Sugden: Nowhere close, no.

Mr. Hernandez: And the bags went straight from Pheasant Hollow to the trailer?

Clint Sugden: Pheasant Hollow to the trailer.

Mr. Hernandez: On the day of the shop inspection you were also at another job site being inspected by the Division of Air Quality?

Clint Sugden: And Bo came up. He didn't actually do an inspection. It was starting to rain and we were packing everything up. (Hagen, Beau and Call?) came up to our job site. It was starting to rain. It was a roofing project. We didn't get an actual written inspection. He just pulled up and it was raining and we were all scrambling to put everything up, so.

Mr. Hernandez: Okay. When you come back or got done with that did you come to the shop?

Clint Sugden: I did.

Mr. Hernandez: Did you see the investment 700, the B&B 700 Investment job bags at the shop?

Clint Sugden: Yes I did, yes.

Mr. Stephens: Which job are you referring to now?

Mr. Nelson: Is that the one referred to as Draper?

Mr. Hernandez: Yeah, the Draper job.

Mr. Stephens: Okay.



Hearing officer: That's the one and the same as the Draper job we talked about earlier?

Mr. Hernandez: Yeah.

Hearing officer: It's not a different Draper job?

Mr. Hernandez: No. It's the ones that were in there that Greg Sorenson has said that --

Mr. Stephens: On the 26th of August.

Mr. Hernandez: We had some tags that weren't tagged, ones that he said that wasn't tagged. When you entered into the shop did you see the bags?

Clint Sugden: They were all tagged.

Mr. Hernandez: Did you notice any water leaking from any bag?

Clint Sugden: No, I didn't.

Mr. Hernandez: Was there a hose laying on the bags?

Clint Sugden: Maybe, possibly yeah. We have standing water in there all the time. Sometimes when it rains it comes underneath our garage door.

Mr. Hernandez: Did you personally know Juan and Jose?

Clint Sugden: No.

Mr. Hernandez: I think that's about all I have for this witness.

End of Tape

#### #4 State of Utah Air Quality vs. A-1 Restoration

1-10-07

1:20 p.m. - 4:00 p.m.

#### Side 1

Mr. Stephens: A-1 Restoration is an asbestos contractor, is that correct?

Clint Sugden: Correct.

Mr. Stephens: OK. And it was said here that the Accelerated put non-asbestos containing material in an asbestos bag. Were they A-1 Restoration's bags?

Clint Sugden: I don't know that for sure. I don't know where they got those bags.

Mr. Stephens: Is Accelerated an asbestos contractor?

Clint Sugden: No they're not.

Mr. Stephens: OK. But there were asbestos bags on site?

Clint Sugden: Well, I'm sorry.

Mr. Stephens: Well, they put them in the bags, so they got the bags there.

Clint Sugden: Well, yeah, they got them from somewhere. I don't know where they got the bags.

Mr. Stephens: You don't know if they got them from you?

Clint Sugden: I don't.

Mr. Stephens: OK. Let's see, ok. You said you took the sample from the trailer?

Clint Sugden: I did.

Mr. Stephens: OK. Is that where Steve Beach's samples came from?

Clint Sugden: I don't know where Steve Beach took his samples from, but it was the same material.

Mr. Stephens: You don't know that for sure, though, do you?

Clint Sugden: Yeah, I'm pretty positive.

Mr. Stephens: OK, but you don't know for sure?

Clint Sugden: unintelligible.

Mr. Stephens: OK. Based on these results here, isn't it true that the material that you took from the trailer still contained traces of asbestos?

Clint Sugden: Yes, but under.

Mr. Stephens: No. I just asked a yes or no question.

Clint Sugden: Yes.

Mr. Stephens: OK. You took your samples, based on this document, you took them on August 19th, is that correct?

Clint Sugden: Correct.

Mr. Stephens: OK. Now, this is a day after Steve Beach's inspection, is it not?

Clint Sugden: I know I did my sample the same day Steve did his, unless I didn't get it to the lab

and turned it in later on the 19th, but I did do mine the same day Steve did his. I got there right after he left.

Mr. Stephens: Ok. Is it A-1 Restoration's practice not to fill out completely it's waste manifests?

Clint Sugden: Where would it be not complete?

Mr. Stephens: I asked just is it A-1's practice to fill them out completely?

Clint Sugden: Yes.

Mr. Stephens: Ok. Yet you said here a few minutes ago that this was added in here. I don't see it being written over anything else. So is it true, then, that A-1 here is the contractor?

Clint Sugden: Yes it is.

Mr. Stephens: Then is it also true that they didn't fill out completely the form?

Clint Sugden: No. No. You can either put it in cubic ... those are put there for ...

Mr. Stephens: There's a list here that says bags. I'm just asking a yes or no question. Was this form filled out completely?

Clint Sugden: Yes.

Mr. Stephens: Ok. Yet, here, this was written in later. You said you did not write this. This was written by someone else?

Clint Sugden: Correct.

Mr. Stephens: Ok. But yet you still maintain that this was filled out properly?

Clint Sugden: Yes.

Mr. Stephens: Ok. Getting back to the warehouse. All bags were tagged. Were those the same ones that Greg Sorenson saw on the 26th of August?

Clint Sugden: Yes.

Mr. Stephens: That's what I understood.

Clint Sugden: Yes.

Mr. Stephens: Ok. Now what I understood to have been said before was that it was represented that in transit the labels had blown off the bags. Is that correct?

Clint Sugden: As far as I know, yes. Are you asking me to look ...

Mr. Stephens: No, that's fine. You're the witness so that's fine. Is it your understanding that any labels had come off in transit? Were all the bags when you got there labeled correctly?

Mr. Stephens: Yes they were.

Clint Sugden: Ok. That's all I've got.

Mr. Hernandez: I have a couple redirect questions when you're done.

Hearing officer: Go ahead.

Mr. Hernandez: Clint, on that project out at Hollow, was some of the sheet rock separated from the plaster?

Clint Sugden: Yes it was.

Mr. Hernandez: Where did this happen at?

Clint Sugden: Some back bedrooms.

Mr. Hernandez: Ok. Was one of the back bedrooms ceiling spray on material?

Clint Sugden: Yes it was.

Mr. Hernandez: Is that usually scraped off, just the popcorn ceiling stuff?

Clint Sugden: Yeah.

Mr. Hernandez: So the sheet rock and stuff is left up there?

Clint Sugden: Yeah. It had no asbestos in it. It was left up there.

Mr. Hernandez: So one bedroom was ...

Clint Sugden: It was 2.

Mr. Hernandez: 2 bedrooms was just scraped off.

Mr. Stephens: You need to be asking him questions, not just ...

Mr. Hernandez: Was 2 bedrooms scraped off, just the ceiling material?

Clint Sugden: Yes.

Mr. Hernandez: And how much of the rest of the hall and bathroom and that was separated? Was that separated from the plaster?

Clint Sugden: I believe so, yes.

Mr. Hernandez: Did you go inside?

Clint Sugden: One time real quick, I think.

Mr. Hernandez: At this time I'd like to introduce into evidence the daily reports of the project out at

Mr. Stephens: Those have already been introduced. If you're talking about ..  
Mr. Hernandez: I don't think you have the daily reports. They couldn't have ..

Mr. Stephens: Are these?

Mr. Hernandez: No, them are from a different ...

Hearing officer: Excuse me, are you talking about daily reports from your company for certain ...

Mr. Hernandez: From our company for the Pheasant Hollow job that Greg inspected. We have, actually, daily reports and containment logs that we think should be entered in as evidence because they actually describe the whole project.

Hearing officer: Why weren't they submitted earlier?

Mr. Stephens: That's my question.

Mr. Hernandez: Do you mean earlier as in today or earlier as in ...

Hearing officer: As when you ...

Mr. Stephens: So that we could all have a look at them before we're here.

Mr. Hernandez: We had no idea that they were trying to say that this Pheasant Hollow or this Roderick, I guess they call it Pheasant Hollow, had material in the asbestos shop. We were all ... we knew that it come from Accelerated and the Accelerated, Juan and them put this material there. We didn't think that ... we didn't even know about this. Greg come up with this in his head. This is just Greg. We don't know why Greg thinks it's the same material. We can prove that it's not. We think we proven it's not.

Hearing officer: You have thoughts on this?

Mr. Nelson: I'm inclined to let him put it in and ask questions and then we'll just evaluate it.

Mr. Stephens: Let me, if I may, ask this. You're saying that you weren't aware of this until when, because you obviously brought it with you today so you had to have clued in that it might be required for today.

Mr. Hernandez: When did I pull this file? This morning about 7:00 in the morning I pulled this file, made all the copies of these ...

Mr. Stephens: Ok, but my question is ...

Mr. Hernandez: That's when I first realized it, when I was going through your information that you compiled.

Mr. Stephens: Ok, I'll just raise an objection to that because I don't think it's fair for us to have to defend that when we've never seen it before.

Mr. Nelson: If after looking at it appears they need more time to evaluate it we can always ...

Hearing officer: I can reconvene or whatever I need to do. Ok, we'll allow you to admit it with the recognition that Chris has some concerns and we'll take it under advisement if it appears that there's a need for the division to have additional time to process the information.

Mr. Hernandez: Basically, they're of the Roderick residence and they're the dailies.

Mr. Nelson: Ok, you only have one copy?

Mr. Hernandez: Yeah, I have mine. Let me see if I made ... I may have only had one copy and I may not. No, I have several copies.

Hearing officer: Let me suggest something, Matt.

Mr. Hernandez: Yes.

Hearing officer: And that is, apparently you pulled that information from the file.

Mr. Hernandez: Yeah. I did all this this morning.

Hearing officer: Yes. I understand, but my question to you is are you asking your witness to testify about this information or are you introducing evidence on your own behalf or what?

Mr. Hernandez: No. If I was I would be doing it when I testify at the end as myself. I'm entering into it because Clint's on the daily reports and he was actually at it and he witnessed what went on, but it's actually in writing. The project's in writing, too. We're required by law to keep a job file on all the jobs. Everything that you're seeing here goes in our job file.

Hearing officer: And what is it you're trying to show?

Mr. Hernandez: That Clint was on site and that we used amended water and stuff was wet and we tore down and took the lost neg air pressure, opened up the area, used several barrels of water.

We just want to show that we followed the procedures, used amended water, took them straight to Mont's trailer and it's all in the report. I also got the Sandy reports too, daily logs too, the one from the Sandy project, the labeling for the labels.

Hearing officer: Ok. Well ...

Mr. Hernandez: These are the records that we have to keep and they're the records of the project.

Hearing officer: I understand, but this issue's been going on since June of last year and I'm not quite clear why, when you requested initially the conference and then ultimately leading to this hearing, that this information was not submitted in a timely manner.

Mr. Hernandez: We tried to submit some of this information and we talked in a compliance advisory ...

Mr. Stephens: Ok, but the compliance advisory is not required. That's something if you want to bring it in that's fine, but that just goes to establish my point that if you were certain that this sort of stuff would need to be here to substantiate what you're saying you should have submitted it when I asked you if you had anything before and it's just now coming out here. We've had no ability to look at this ahead of time. I'm looking at this stuff blind. I have no idea what I'm looking at.

Hearing officer: The way it's shaping up I think the way to handle it at this point is I may have to continue this hearing to another day anyway based on the length of time it's taken. At least take it under advisement. What I would direct you to do is to make proper copies and submit them to the parties for consideration and then we'll decide if we have to reconvene at a later date. At this point at face value I'll take, basically, your assurance, which you, I think, will back up with the paper, that you have the proper records to show what occurred at the Pheasant Hollow facility. And I think the right name is Pheasant Hollow, not Pleasant.

Mr. Hernandez: Pheasant Hollow, yeah. I call it the Roderick residence.

Hearing officer: Yeah, was the Roderick residence, then, it got sold to Pheasant Hollow or whatever. Ok.

Mr. Hernandez: But on my dailies, that's ...

Hearing officer: Is that ok, Chris?

Clint Sugden: Fred Roderick owns it. He's the developer.

Hearing officer: So let's move on. Please make copies and get them to the parties so that we can evaluate it, ok?

Mr. Hernandez: I will. In fact, I could probably give them to you right now. I think I made enough copies to do that, of both B&B and that so when we ... at the end I'll give them all to you, ok? I believe ... I think that's just about handled it. I think that's it.

Mr. Stephens: I have actually just one or 2 more cross examination questions. The insulation that was in the trailer when Steve Beach came to do his inspection on the 18th of August, you said that's not A-1's insulation.

Clint Sugden: No.

Mr. Stephens: Yet you went ahead and took a sample of it to prove there that there was no asbestos in it even though it was not your insulation?

Clint Sugden: Correct, because it was in our shop. We share a shop with Accelerated.

Mr. Stephens: Ok. So is it fair to say you felt some responsibility for what was in your own trailer?

Clint Sugden: They were saying it was asbestos ...

Mr. Stephens: That's just a yes or no question.

Clint Sugden: Say that again. Repeat it.

Mr. Stephens: So is it fair to say you felt some responsibility for the insulation that was in your trailer when an asbestos inspector came out there, even though you claimed it wasn't yours?

Clint Sugden: What do you mean responsibility? You're going to have to rephrase that, you mean your ...

Mr. Stephens: No. We've established here from your testimony that you said that the insulation that was in the trailer when Steve ... your trailer. It was A-1 Restoration's trailer, correct?

Mr. Hernandez: It's Accelerated Design ...

Mr. Stephens: Ok, it's ...

Mr. Hernandez: I'll bring you the registration to show you it's Accelerated.

Mr. Stephens: Ok. He's the one that's testifying, not you. Was it A-1 Restoration's trailer?

Clint Sugden: No. It's Accelerated and Design's trailer.

Mr. Stephens: It's Accelerated's trailer?

Clint Sugden: Yes.

Mr. Stephens: Ok.

Clint Sugden: But it was at our shop.

Mr. Stephens: Steve Beach came out there to take samples. You took a sample yourself?

Clint Sugden: Yes.

Mr. Stephens: From a trailer that you said is not yours and from insulation you said is not from ...

Clint Sugden: Yes.

Mr. Stephens: That you had no responsibility for?

Clint Sugden: Uh huh.

Mr. Stephens: Ok, that's fine. I'm just trying to figure out why you wouldn't pass the buck, but that's fine.

Hearing officer: Any other questions?

Mr. Stephens: That's it.

Hearing officer: I've got a couple for you. Would you please differentiate for me between asbestos containing material and asbestos waste.

Clint Sugden: Well, containing material would be actually containing it and waste would be waste that has asbestos in it.

Hearing officer: Ok. How much asbestos has to be present for material to be classified as asbestos waste?

Clint Sugden: 1% or greater.

Hearing officer: Are you sure of that?

Clint Sugden: Pretty positive. Anything less than 1% is non-asbestos containing material.

Hearing officer: As an example, if you have the containment up, you've done a clean up and now you've taken down the containment and all of the plastic sheeting from the containment must be treated as asbestos waste, right?

Clint Sugden: Correct.

Hearing officer: Does it have more than 1% asbestos in it?

Clint Sugden: I don't know. I don't really understand the question. I know what you're saying, but I don't understand where you're going with it.

Hearing officer: Well, the part I'm trying to sort out in my own mind is that at your shop the material on the floor was, of it's nature, asbestos waste because it was material that could be classified as asbestos waste because of the activities around it. And the fact that some of it had asbestos in it, even though the percentage was not above 1%, it still gets classified as asbestos waste. If you read the definition it doesn't appear that asbestos waste has a minimum threshold for asbestos. It's not 1%. It's any amount. Ok? So that is one question. The second question I've got and I don't know if you're the right person to answer it, but I want it answered, is what's the relationship between the different tenants and this shop? You've got A-1 there. You've got Accelerated and I think you mentioned ...

Mr. Hernandez: And also Chester Goodman.

Hearing officer: Chester Goodman?

Mr. Hernandez: Yeah, he was using it, too, for salvage ...

Hearing officer: Is he a corporation or just an individual?

Mr. Hernandez: Just an individual. He works for Accelerated, but he is an individual.

Hearing officer: Ok. Are A-1 and Accelerated ... you're not witnessed right now, so if you're answering maybe I need to wait on this until you're under oath, but are these owned by the same company?

Clint Sugden: I don't know. I think so. I don't know for sure.

Hearing officer: Ok. We'll hold the question till later. The other question is ... well, this will wait for later as well. Let me see if I had anything else. I guess that's all I had. Do you have anything?

Mr. Hernandez: I've got one more question. Asbestos waste material, is it not any material generated from a regulated asbestos project?

Clint Sugden: It is.

Mr. Hernandez: I think that was the answer you were looking for.

Hearing officer: No it wasn't, but that's a good question because it led to another question of mine.

Mr. Hernandez: Go ahead.

Hearing officer: Suppose there was a mistake made of some kind resulting in some waste being generated that was not classified as asbestos waste sufficiently because it didn't get identified early enough. You know, a surprise (party?) of some kind.

Clint Sugden: Uh huh, possible.

Hearing officer: But it's got asbestos in it. Is it asbestos waste or not, even though it's not been classified through the normal identification process? Let's, as an example, say somebody took down a house and then realized there was asbestos even though they'd done all due diligence they didn't discover it early on. Now you've got this bag of stuff and somebody says you know what, that's probably got asbestos in it. Because, you know, they found out later. Is it asbestos waste or not? In other words, does asbestos waste only come from a regulated site?

Clint Sugden: No.

Hearing officer: Ok. Thank you.

Mr. Hernandez: My next witness is Cameron Hernandez, an employee of A-1 and foreman for Accelerated Design and Construction.

Recorder: Would you raise your right hand and be sworn.

Recorder: Do you swear or affirm to tell the whole truth and nothing but the truth?

Cameron Hernandez: Yes I do.

Mr. Hernandez: What's your name?

Cameron Hernandez: Cameron Jerome Hernandez.

Mr. Hernandez: Do you work for A-1 Restoration?

Cameron Hernandez: Yes I do.

Mr. Hernandez: Do you work for Accelerated Design and Construction?

Cameron Hernandez: Yes I do.

Mr. Hernandez: I'm looking at 2 daily reports dated 8-4 and 8-5. Were you the foreman on this job for Accelerated Design and Construction?

Hearing officer: Excuse me, which year are you talking about?

Mr. Stephens: These?

Mr. Hernandez: These right here.

Mr. Stephens: Ok. These are what I handed you, this copy this morning.

Hearing officer: Ok.

Mr. Hernandez: I have an extra copy if you need it.

Hearing officer: Ok. So now have these been admitted to exhibit?

Mr. Stephens: Yes. They were admitted this morning.

Mr. Hernandez: Is that your signature on the daily report dated 8-4-05?

Cameron Hernandez: Yes it is.

Mr. Hernandez: What were you doing at this project?

Cameron Hernandez: Salvaging for goods all over the place. There was a big bunch of demolition and stuff and we were salvaging anything of value from the property.

Mr. Hernandez: Can you tell me, was Jose Ramirez, Juan Nunez and Chester Goodman employees of Accelerated?

Cameron Hernandez: Yes they were.

Mr. Hernandez: Did they work on both 8-4-05 and 8-5-05. Did all 3 of these individuals work at this project?

Cameron Hernandez: Yes.

Mr. Hernandez: Ok. If you'll look at Accelerated's daily report 8-4-05 where it says, note: tell Matt Juan wanted blown insulation for house. Is this your note?

Cameron Hernandez: Yes it is my note.

Mr. Hernandez: Tell us about this note.

Cameron Hernandez: Well, Juan had asked me, you know, because he didn't know who else to ask. I guess he said he had tried to get a hold of Matt. And he asked me if I could make a note of it. That way I could confirm it for him so he could take blown insulation for his house. And so I made a note of it on here so I wouldn't forget to tell Matt.

Mr. Hernandez: Did you ask me 8-4?

Cameron Hernandez: Yes I did.

Mr. Hernandez: What did I say?

Cameron Hernandez: You said yes.

Mr. Hernandez: On daily report 8-5-05, did Jose, Juan and Chester work that day?

Cameron Hernandez: Yes they did.

Mr. Hernandez: Can you read the daily report?

Cameron Hernandez: Yes. We continued salvage at the Arbor Commercial Redevelopment Project for copper front doors and door handles and the matching sink and toilet. Juan and Jose took blown insulation to the shop. Jose Ramirez had 5 hours. Juan Nunez had 5 hours and Chester Goodman had 8 hours.

Mr. Hernandez: Was there any problems noted?

Cameron Hernandez: No. No problems noted.

Mr. Hernandez: Cameron, did you work for A-1 at the Pheasant Hollow job that would be located at 454 West 10000 South?

Cameron Hernandez: Yes I did.

Mr. Hernandez: Was blown insulation present?

Cameron Hernandez: Yes there was, on the upper floor unintelligible. It was a 2 floor house.

Mr. Hernandez: So there was blown insulation only on the top floor?

Cameron Hernandez: Yeah.

Mr. Hernandez: On the back 2 rooms there was popcorn ceiling. Was it just scraped off or was the ceiling pulled down?

Cameron Hernandez: It was actually separated from the ceiling. There was another ceiling that was between the ... I guess it would be the blown insulation and the spray on. There was a spray on and then sheet rock and then plaster and then the blown insulation. I believe that was how it was in the back. And yeah, you could scrape it off.

Mr. Stephens: I think the question was is that what happened?

Cameron Hernandez: It was what happened. They were scraped.

Mr. Hernandez: The front part in the living area, that was just sheet rock and knocked completely down?

Cameron Hernandez: Yes.

Mr. Hernandez: And blown insulation come in?

Cameron Hernandez: Yeah, it was.

Mr. Hernandez: And there was no plaster above that?

Cameron Hernandez: No. No.

Mr. Hernandez: So there wouldn't be any plaster ...

Mr. Stephens: No, you're leading.

Mr. Hernandez: Would there be any plaster in the insulation?

Cameron Hernandez: I don't think there was at all because there was no disturbing any of the plastered areas. It was too hard for us to try to bring down the ceiling where the plaster was and it was a lot easier to scrape off the asbestos even though, ultimately, the asbestos was hard to scrape in the entire building. And that's why we chose to tear the sheet rock down versus trying to scrape it off.

Mr. Hernandez: Did you help bag out?

Cameron Hernandez: Yes. I was there for the entire project.

Mr. Hernandez: Was the blown insulation wet?

Cameron Hernandez: Yes, it was wet.

Mr. Hernandez: Adequately wet?

Cameron Hernandez: All bags that came out of containment were adequately wet.

Mr. Hernandez: Did you help take the bags to Mont's trailer?

Cameron Hernandez: Yes I did.

Mr. Hernandez: Did they go straight to Mont's trailer?

Cameron Hernandez: Yes, straight, then we unloaded them into the trailer.

Mr. Hernandez: Do you have anything to do with filling out the manifest?

Cameron Hernandez: No.

Mr. Hernandez: You were at the Draper project on 700 East. Were you the person that tagged the

bags?

Cameron Hernandez: What project?

Mr. Hernandez: It would be 8571 South 700 East.

Cameron Hernandez: Oh yeah, yeah, I was present at that job.

Mr. Hernandez: Were you the one that put generator labels on the bags?

Cameron Hernandez: Yes I was.

Mr. Hernandez: Were all the bags labeled before leaving the site?

Cameron Hernandez: Yes they were.

Mr. Hernandez: Who else was there with you?

Cameron Hernandez: Matt was there with me and another gentleman, I do believe his name was Edwin, Edwin Guerrero maybe. Edwin, I know his first name was Edwin.

Mr. Hernandez: Edwin Romeros?

Cameron Hernandez: No. Something different. I'm not quite sure what the last name was.

Mr. Hernandez: According to the report, Chris Hernandez was also at this address. Is that right?

Cameron Hernandez: Yeah. Yeah, actually he was.

Mr. Hernandez: This was about a year and a half ago. Is that why you're having trouble remembering?

Cameron Hernandez: Yeah it was, it was quite a while ago. Plus it was just a really short project. It only took us a matter of hours to do.

Mr. Hernandez: So you said you personally put the generator labels on? Can you tell me how you did it?

Cameron Hernandez: I used a spray adhesive glue and I applied some to the bag and then to the generator label and then pasted it on.

Mr. Hernandez: And then where was the bags taken?

Cameron Hernandez: They were taken to our shop on 3345 South 3rd West.

Mr. Hernandez: Did we unload the bags at the shop for temporary ...

Mr. Stephens: That's a leading question.

Mr. Hernandez: What did we do with the bags?

Cameron Hernandez: As we arrived at the shop we unloaded the bags for temporary storage before we took them to Mont's trailer.

Mr. Hernandez: Were there any labels missing when we unloaded the bags?

Cameron Hernandez: Yes, there were some labels.

Mr. Hernandez: Were all the labels missing when we unloaded the bags?

Cameron Hernandez: No.

Mr. Hernandez: What happened to the labels that were missing?

Cameron Hernandez: I'm not sure. They probably had blown out, I would think, because as we arrived at the shop they were no longer on the bags and weren't anywhere around where the bags were in the trailer at, so it's my belief that they blew off.

Mr. Hernandez: But you personally tagged the bags?

Cameron Hernandez: Yes I did.

Mr. Hernandez: When we were at the shop did Greg Sorenson show up at the shop?

Cameron Hernandez: Yes he did.

Mr. Hernandez: Did Greg Sorenson come in the shop at first without his video camera?

Cameron Hernandez: Yeah. Yes he did.

Mr. Hernandez: Were there any leaking bags in the bags that were sit at the shop?

Cameron Hernandez: No.

Mr. Hernandez: Was there any hoses that may be dripping our outside water that could have come in?

Cameron Hernandez: It's possible. To my recollection I don't remember seeing any water on the ground there.

Mr. Hernandez: So you didn't see any water at all period?

Mr. Stephens: You're asking a leading question.

Mr. Hernandez: Did you see any water at all?

Cameron Hernandez: Not that I can recall.

Mr. Hernandez: At Pheasant Hollow, did you go to Mont's trailer with the bags?

Cameron Hernandez: Yes I did.



Mr. Hernandez: So you can ...

Mr. Stephens: You're trying to establish what bags we're talking about.

Mr. Hernandez: The Pheasant Hollow asbestos bags, were you with the bags when they went directly to the trailer?

Cameron Hernandez: The ones with the blown insulation and the sheet rock?

Mr. Hernandez: Yes.

Cameron Hernandez: Yes I was.

Mr. Hernandez: So you can positively state that them bags from Pheasant Hollow went straight to Mont's trailer?

Cameron Hernandez: Yes I can.

Mr. Hernandez: That's all the questions I have.

Hearing officer: Chris?

Mr. Stephens: Yeah, just a few. You personally labeled the bags on the Draper project?

Cameron Hernandez: The Draper project?

Mr. Stephens: That's how we've been referring to it.

Mr. Hernandez: Yeah, it's this project, the Sandy scrape. They call it the Draper, but I actually think 8571 South ...

Cameron Hernandez: Oh yeah, the small ... yeah ...

Mr. Stephens: Ok. The ones we were just talking about.

Cameron Hernandez: Right.

Mr. Stephens: Ok. You personally labeled them?

Cameron Hernandez: Yes I did.

Mr. Stephens: And you said when you got back to the shop some of the labels were missing?

Cameron Hernandez: Yes.

Mr. Stephens: Some, but not all?

Cameron Hernandez: Some but not all.

Mr. Stephens: Ok. That's all I have. Thanks.

Mr. Hernandez: I have a couple of additional questions on the video.

Hearing officer: Ok. You described on how the Pheasant Hollow project that scraped layers away from parts of the house. Is that what I heard? Is that what you said?

Cameron Hernandez: No, that we had chose to scrape off the ACM that was on the outside versus trying to break down the layers.

Hearing officer: On the soffit's, you mean? On the outside of the house or is this inside the house?

Cameron Hernandez: No, inside the house.

Hearing officer: You scraped that off?

Cameron Hernandez: Yeah, off ... I'm sorry, I don't understand.

Hearing officer: Well, the questioning that Matt was doing, I thought I heard and I want to make sure I understood, was that the outcome of that questioning was inside the house there were certain areas that you or the crew elected to scrape off the asbestos containing material as opposed to removing the entire wall system. There were other parts of the house where the entire wall system was removed. Did I understand? Is that what you understand was done in the project?

Cameron Hernandez: Yeah, that was what was done and the ceiling is what we decided to take down. There were places in the back where it was hard to just bring down the ceiling. We decided to scrape those areas off and then the rest of the place where it was easier we decided to drop the ...

Hearing officer: How did you determine that you removed all of the asbestos from those areas that you scraped?

Cameron Hernandez: Well, the same way that we do any area. When we do any ceiling scrape we made sure there was no visible debris, that it was completely scraped, scrubbed, rinsed and squeegeed completely clean.

Hearing officer: Were there any follow up samplings taken?

Cameron Hernandez: I'm not sure.

Hearing officer: Ok. I'm very curious about all these generator labels that fell off the bags especially where they were sprayed on with spray adhesive. Have you had similar problems with labels falling off bags?

Cameron Hernandez: Not entirely. Usually if you spray both the bag and the generator label they tend to stick really, but upon certain events ... like I think it was earlier that day ... it might have been like ... I don't know, maybe that was not the date ... I don't know, just in the instance like if it's wet around or certain things like that, dirty, they tend not to stick so well if dirt gets on them and stuff like that. That's the only other problem I've had with the labels on the bags. Other than that if it's not dirty or wet they stick on them really well.

Hearing officer: Did you have an unusual circumstance of some kind on these bags at the project where all the labels fell off, were the bags dirty, for example?

Cameron Hernandez: I wouldn't think that they were too dirty. I don't know, they could have been inside of the ... in the trailer they could have gotten rumbled around because there really wasn't wet really or it wasn't really unusually dirty.

Hearing officer: So you did not notice any unusual dirt or wetness or anything that would result in the failure of the adhesive?

Cameron Hernandez: No.

Hearing officer: Ok. I don't have any other questions.

Mr. Stephens: That's it for us.

Mr. Hernandez: I've got a few more. Did it rain that morning?

Cameron Hernandez: That morning it did rain, earlier that morning, but at the time we were finished with the project it wasn't raining out of the sky, but it had rained earlier.

Mr. Hernandez: Did it rain again later that day?

Cameron Hernandez: Yeah.

Mr. Hernandez: So it was a rainy day?

Cameron Hernandez: Yeah, but it wasn't rainy while we were at the shop because I remember there was a peak in the storm or a bright point in the storm.

Mr. Stephens: Then I do have a question. Were the bags wet?

Cameron Hernandez: The bags, inside of the bags or outside?

Mr. Stephens: Well, my question goes to how the labels might have come off if they had been on there. Were the bags wet to begin with when you were putting the adhesive on them?

Cameron Hernandez: Oh, no.

Mr. Stephens: Ok, so the bags were dry?

Cameron Hernandez: Yes.

Mr. Stephens: Ok. So then does it really make any difference whether it was raining or not? It doesn't make any difference does it, whether it was a rainy day?

Cameron Hernandez: Yeah, I don't think that that would have any effect on that entirely. The only possible other thing that might have effect on it is the fact that the wind blowing from inside there, but like I said before, it normally doesn't make too big of a problem, but there's always them cases where things happen.

Mr. Hernandez: Ok. Did you re-put the generator labels on as soon as I told you at the shop when I noticed that a few were missing?

Cameron Hernandez: Yes I did.

Mr. Hernandez: Did you notice any tags flying off during transportation?

Cameron Hernandez: I don't know. I thought that there might have been or whatever because I said something to you about it. But I don't know. I didn't actually see them flying around in the sky or anything. I just was worried about it because of the fact that there was a lot of stuff blowing under the tarp and stuff like that.

Mr. Hernandez: So it was a covered load?

Cameron Hernandez: Yes. It was covered.

Mr. Hernandez: I don't have any more questions.

Mr. Stephens: Ok. I just have one more question. Back at the shop you were the one who put the labels back on the bags?

Cameron Hernandez: Yeah.

Mr. Stephens: Just you?

Cameron Hernandez: Just me. I handed some labels to my dad when I went inside there, but yeah.

Mr. Stephens: Let me maybe ask this question. Were all of the bags missing labels?

Cameron Hernandez: No. There were, like I said before ...

Mr. Stephens: Just yes or no, were all the bags missing labels?

Cameron Hernandez: No.

Mr. Stephens: Ok.

Hearing officer: All right, that's all for this witness. I need to take a 5 minute break to reschedule a meeting that I'm supposed to be in at 3:30.

Mr. Stephens: May I ask a question, are we going to continue ... (tape is stopped) ...

Hearing officer: All right. I think we're ready to proceed and reconvene here. It's 3:10 on January 10, 2007, and we're continuing the A-1 Restoration notice of violation deal here. And I think at this point, Clint, are you our next witness?

Mr. Hernandez: Matt.

Hearing officer: Matt, I'm sorry. I'm getting a little drifty in my old age. We need to swear you in if you're going to be a witness.

Mr. Hernandez: I will.

Recorder: Do you swear or affirm to tell the whole truth and nothing but the truth?

Mr. Hernandez: I do.

Hearing officer: All right.

Mr. Hernandez: I'd first like to talk about the 8571 South 700 East referred to as the Draper job. I, Matthew Hernandez, personally watched Cameron Hernandez put generator labels on what appeared to me, all the bags. I did notice that some of the tags did blow off. We put our tarp over the top of Accelerated's dump trailer when we use it a lot. And the air is allowed to go under our tarp due to screens of the dump trailer. I noticed that some of our generator labels had come off. We unloaded the bags. I really noticed it, that there was some labels missing, but there were labels that were already on the bags and if you'll notice the video there was no possible way we could have re-tagged all of the bags like they were tagged there. Most of the tags were already on there. By the time we got the tags in there Greg was in there with a video and I helped, me and Cameron tagged the bags that Greg seemed to find that didn't have any ... that we say blew off. I know we tagged them all. I ordered Cameron Hernandez to tag the bags, to put the generator labels on. I watched him. I did notice a few blew off. There at the shop we were going to head up to Clint's job site. Greg come over. At that time I did order Cameron to go put the tags on and that's when Greg come in with the video.

I never noticed no leaking bags. There was no leaking bags, nor did Greg ever bring up any leaking bags. I look on the video. I don't see no leaking bags. I have to come under the conclusion that there was no leaking bags anywhere in our facility.

Now, to get on to the Arbor project. Cameron did ask me if Juan and Jose could take the bags of insulation to their house to re-insulate their house. They also wanted some sinks, doors, door ... some different other things, too, throughout the project. I told them they could have that, too. I don't know if this has been ... I had to give this to the Arbor people at Arbor Commercial. They give this to the police department. When we had additional workers from Accelerated out there the police wanted this so I had to mark down when they were going to be there. I think you got this.

Hearing officer: Excuse me, is this a ... my quick question just for clarification, you said police. Was it police for your security services?

Mr. Hernandez: No. We give this to Arbor and Arbor told them that they ... we had to get them cleared because the police had come out there so Arbor had to have one of these on site when they were doing that just so they wouldn't get thrown in jail, basically, to be out there because they had a lot of scavengers out there doing what we were doing without permission. And it was getting to be a problem.

I did tell Cameron it was ok if they took blown insulation for the house. Clint reported to me that he had personally seen them pulling it down and so did Cameron. I seen them out at the Arbor project site, but not actually in the house pulling the ceiling down. I went into the house afterwards and they had pulled where it had looked like they had built a new addition onto an old addition, come out this far ...

Mr. Stephens: Are we still talking about the Arbor project?

Mr. Hernandez: Yeah.

Mr. Stephens: And this is not Pheasant Hollow?

Mr. Hernandez: Yeah. This is the Arbor. And they had pulled all the ceiling down and then it looked like they left the ceiling down there and just shoveled the stuff up. But it was broke up a

little and it was probably mixed the same as any debris that was in there.

Now, getting to my shop, I wasn't there at Steve Beach's inspection. I didn't get there until it was over. I didn't see him when he took the pictures or done the inspection. I was there when he asked me if he could pull some samples. I told him it was Accelerated's that was in there too and Chester was part of the place, but it was ok with me that .. I didn't think there was any problem with the insulation, that it had come from the Arbor project. So Steve Beach took the samples. I told him if there's a problem give me a call. I never heard from Steve again until .. I never talked to him again till today.

Greg Sorenson come by later to do another DAQ inspection of the shop. He come in, he was taking a video. He took more video than was on this video that we seen. For some reason he erased the whole second ...

Mr. Stephens: You're speculating.

Mr. Hernandez: No, I watched him video tape Cameron and video tape some more stuff around the shop. After the end of that video, for some reason, the rest of the video's not there. And from my observation I don't know why. And then he went to his car and we were talking about them and I told him all the bags were labeled and he got a little bit mad at me and he jerked his car into the gear and he started back and then he stopped and pulled forward and started yelling at me and then he opened the door, smashed me in the leg with the door and chased me to my shop. About half way to my shop he stopped and went over the neighbor's shop. That's what happened at the warehouse.

Mr. Stephens: I'm going to object on relevance grounds. I don't know how this ... this was the day that Greg Sorenson was out there to ... and took video of bags. That's the allegation. There was a leaking bag and bags that were unlabeled. I'm failing to see how ...

Mr. Hernandez: I'm just trying to tell ...

Mr. Stephens: Well, I understand, but I'm concerned about relevance here. I don't see what that has to do with what we saw in the video tape.

Hearing officer: Let me note the objection. The question, of course, I think, was the DAQ inspector acting in a professional capacity and in a professional manner?

Mr. Stephens: Well, certainly. Although that doesn't necessarily go to the question of whether the bags were labeled or not.

Hearing officer: I agree and I don't believe that I will confuse the two issues.

Mr. Stephens: Ok. That's fine.

Mr. Hernandez: I also noticed that there was no water on the floor, no leaking bags or anything like that that I noticed or seen in my shop on Greg Sorenson's inspection. There was a hose and I think it's in the video, that was set on there. The hose could have dripped. But I didn't see anything on the ground. I didn't see any water in the video. Nobody seen any water and there was never no water reported to me. There was never nothing about water ..

Side 2

Mr. Hernandez: ... till this NOV thing. There was no water anyone ever seen.

And then Pheasant Hollow ... bagged up the insulation. I was actually in the containment and part of the removal process of ... there was also it seemed to be a lot of more video tape that Greg was taking video. I guess he didn't get a shot of me actually in the containment, but when they were doing neg pressure at the end I was actually in the containment because he told me ... actually it was. He told me to back up so that he could get the negative pressure. I was inside the containment and I was squirting water.

Hearing officer: Well you know, I think I saw that part of the video on this tape right here. I assume it's the full transcription of all 3 tapes?

Mr. Stephens: Yes. That is all 3 of them on it.

Hearing officer: I don't have time right now to go through the whole tape again, but some of the footage that you talk about, it seems like I've seen on the tape and as I mentioned to you earlier, the tape is not contiguous on this copy. There are at least 3 distinct segments separated, in some cases, by more than a minute of dead space. And I don't know if you are aware of that.

Mr. Hernandez: Yeah. I'm not aware of that so I may have missed something that was on the tape.

Hearing officer: Ok. I suggest you maybe look at it a little and let it play a while and when you hit what looks like the end fast forward till something starts again. And just make sure because in fairness I think the record seems to have more tape recorded than certainly we saw

today and that seems to be in line with the amount you say you observed being recorded, ok, so just as a point of clarity, all right?

Mr. Hernandez: I'll look through it.

Hearing officer: All right.

Mr. Hernandez: I was a part of what went on in there. There was ceiling ... what they call popcorn ceiling. We scraped it off with drywall mudding things on a stick. We wet it, scrape it ... this popcorn ceiling texture off. That was what Greg was saying was in the back 2 rooms. In the hallway and the bathroom right here and then it's a living area where the blown insulation, we separated the 2 in the bathroom from the plaster and broke it down, separating the sheet rock with textured mud from the actual plaster up above. Now, when we got over here there was no plaster. There was just the sheet rock with the textured mud. We pulled it down and the insulation above the living room and all that come down with it. And that's what you seen with Greg's video. That was the only room that had the blown-in insulation was allowed to come down, first of all. That was the only place. We adequately wet it. There must have been 40 bags from that room, which we got, about 40 bags. The rest of the project, plastic that we took down, the drywall ... the little material we either scraped or whatever, that made up the other 140 bags.

So the 6 cubic yards, Mark Jensen writes that in. He just goes through and estimates, probably, it looks like this many, looks like this many cubic feet. I don't think that he has an accurate measurement or whatever. The bag count is what we put on there that's required. We put the bag count. I don't know why ... Mont Jensen may be required at the East Carbon landfill to have cubic yards. But we counted the bags. We may have missed one or 2 bags in our count or may have gotten just ... you know, but we counted 187 bags that went straight to Mont's trailer. Nothing from that project ever went to the shop. And we used lots of water. I think we used 8 or 10 barrels of water on this project, which is indicated in the dailies. We more than adequately wet the material and 187 bags is a lot of bags.

I want to introduce into evidence because I don't think you have this ... I just grabbed this. This is the size of our burial bags, our 33x50. This is what we put our asbestos in. This our order form where we get it. It says 50 clear ... about 1, 2, 3, 4, 5 and it says 50 clear printed 6 mil burial bags. And then it says 75 roll 30 counts get ... I think it says what they are. Anyway, the bags are 33x50. I think it says that somewhere on there.

Hearing officer: I don't see a dimension on these. I see 30RI/skid, but I don't see a dimension on any of the bags.

Mr. Hernandez: Well I guess it may have that on here. I guess it don't. Anyway, our bags our 33x50. I thought it would be on here and I hurried up and copied them. I did this stuff this morning.

Hearing officer: Due to the fact this doesn't appear to have the documented information you wanted on it, I don't see any reason to admit it to evidence.

Mr. Hernandez: Oh, right here under adhesive, 33x50 OCT, 33x50 clear printed bags. Basically, when I ran it through it's cutting it off the end. This is the original. But it'll say ... where it says 50 clear it says 33x50. It's actually 75 bags to a roll, but they cut it off. Sorry about that. Because I remember seeing it when I ...

Hearing officer: Ok, so what's the significance of the size of the bag?

Mr. Hernandez: That 187 bags at 33x50 is more than enough bags to do that whole project the way we did it ...

Hearing officer: Ok, and how thick are the bags? They're 33 wide, 50 long?

Mr. Hernandez: They're 6 mil bags. Yeah, 33x50.

Hearing officer: 33 in diameter?

Mr. Hernandez: Wide and 50 inches tall and they open up into a bag.

Mr. Stephens: Are they the same size that was in the video?

Mr. Hernandez: Yeah, exactly the same size as in the video.

Hearing officer: All right, well, fair enough.

Mr. Hernandez: And I just want to say that that's more than enough volume, you know, especially once you adequately wet insulation we have plenty of bags that ... I just want to show where Greg didn't follow any type of criteria when he was estimating. That's all I have to give. Anything else I can answer to Chris.

Mr. Stephens: Ok, just a few questions for you. Ok, this is the same question I asked Clint

before. The trailer that was parked out in front of A-1's warehouse on the 18th of August was not A-1's trailer, is that correct?

Mr. Hernandez: That's correct.

Mr. Stephens: Ok. And the waste that Steve observed in it, that was not A-1's waste to dispose of?

Mr. Hernandez: That's correct.

Mr. Stephens: Ok. Did A-1 still feel responsible for the waste that was in it? Yes or no.

Mr. Hernandez: No.

Mr. Stephens: Ok. Yet you had an employee or one of your employees, on his own, went ahead and had a sample taken to determine whether or not there was asbestos in it. Is that correct?

Mr. Hernandez: No.

Mr. Stephens: So Clint Sugden did not take a sample out of the trailer?

Mr. Hernandez: He did.

Mr. Stephens: He did?

Mr. Hernandez: But not on his own.

Mr. Stephens: Ok, but he still had that done and he's an employee of A-1, correct?

Mr. Hernandez: Correct.

Mr. Stephens: Ok. So a sample was taken from out of a trailer that A-1 does not own and waste that A-1 says is not it's own to determine whether there was asbestos in it or not. Ok.

Mr. Hernandez: Actually ...

Mr. Stephens: No, that's ok. I'll ask questions here. Let's see. The Draper job ... you watched your son put labels on all of the bags, correct?

Mr. Hernandez: Correct.

Mr. Stephens: And you say that you saw in transit some labels blow off?

Mr. Hernandez: I did.

Mr. Stephens: Ok. In the video all the labels appear to be gone. The only labels that you can see in the video are ones that you just put on there.

Mr. Hernandez: That's not true.

Mr. Stephens: Well, my question is were there any bags, yes or no, that still had labels on them when you got back to the shop?

Mr. Hernandez: Yes.

Mr. Stephens: Ok. All right. You usually wet insulation down for disposal regardless of whether or not it contains asbestos?

Mr. Hernandez: Yes we do.

Mr. Stephens: Ok. You say that nothing from the Pheasant Hollow business part went to the shop. Ok. So you said it was taken directly to the trailer and then taken away?

Mr. Hernandez: On that job all the materials taken directly to the trailer.

Mr. Stephens: Ok. Let's go to the waste manifest for Pheasant Hollow Business Park. I wish I could say right off hand which one it is.

Hearing officer: That's 4.h.

Mr. Stephens: Ok. Now I have a couple of questions about this waste manifest. Under the contractor section it's dated 8-2-05 and the destination date down at the bottom right corner is 9-7-05. You said that that was not stored at your shop in the meantime?

Mr. Hernandez: Nope.

Mr. Stephens: Ok. Is that true that that's over a month's time from when it was first collected to when it was finally disposed?

Mr. Hernandez: That's correct.

Mr. Stephens: Ok. Now I guess I have another question that goes back to ... you're claiming that someone else who is not an employee of A-1 wrote this 6 yards in here?

Mr. Hernandez: Yep, MK Jensen.

Mr. Stephens: No, I just ... it's ... you, as a contractor, did not write that in there?

Mr. Hernandez: Not that 6 yards, correct.

Mr. Stephens: Ok. Did someone from A-1 Restoration, yes or no, write in the 187 bags?

Mr. Hernandez: I did.

Mr. Stephens: Ok. That's all I have.

Hearing officer: On this same manifest that we're looking at I see that under part 3 of the manifest there are 2 transporters listed.

Mr. Hernandez: Correct.

Hearing officer: One is A-1 Restoration.

Mr. Hernandez: Correct.

Hearing officer: And your signature, I believe, is at the bottom of that section with a receipt date of August 5, 2005.

Mr. Hernandez: That's when I took it.

Hearing officer: That's when you took it?

Mr. Hernandez: Took it to the trailer. Mont had a trailer parked in North Salt Lake that transported all my projects. When the trailer filled up down to the East Carbon landfill because they shut down waste control management, DAQ did, for a long time that's how we all took our trailers. There was EAS's trailer parked next to mine. There was about 4 trailers and we all had our trailer and our spot out there.

Hearing officer: Ok, so you took the load from Pheasant Hollow and your row has transporter number one.

Mr. Hernandez: Yes.

Hearing officer: You received the material on August 5, 2005?

Mr. Hernandez: Yep. It coincides right here with our report when we tore down.

Hearing officer: And then All Services took receipt on September 6, 2005, according to transporter number 2.

Mr. Hernandez: Yep. That's when they picked the trailer up from North Salt Lake and transported it down to East Carbon, but it looks like they didn't actually get it dumped till the day after.

Hearing officer: But you, then, have a trailer out in North Salt Lake and you maintain ...

Mr. Hernandez: I don't, All Services maintained a trailer out there for asbestos debris.

Hearing officer: But All Services ...

Mr. Hernandez: It was their property. All Services has a property out in North Salt Lake and they were the only transporter to the only asbestos place to dump asbestos in the State of Utah. So me and EAF and, I think, Fred even had a trailer out there. You know, eagle and them, and we would put our jobs in this trailer and when the trailer got full they would take all the jobs down to the ...

Hearing officer: Yeah, but I'm trying to understand how All Services took custody of this material somewhere around August 5th, but didn't sign off till September 6th.

Mr. Hernandez: They just park a trailer up on North Salt Lake and as soon as we call them and tell them our trailer's full and give them all our manifests and then they get our manifests and, evidently, they write the cubic yards in every single one of them because I see they wrote it on the Jeff (Rable?) one too. And they take them down. If you'll notice, they were all accepted on 09, the other manifest, and then dumped on 9 of 07. So they take all these jobs that we do that we put in this trailer ... they take them all down on one day and dump them, but we put them in there over several months. We fill the trailer up.

Hearing officer: Ok.

Mr. Hernandez: And we're smaller than some companies so we don't fill up a trailer as fast as Eagle Environmental would do.

Hearing officer: Ok. That helps me understand. Now the next question I have is tell me what the business relationship is between Accelerated and A-1.

Mr. Hernandez: I own A-1.

Hearing officer: You own A-1 ...

Mr. Hernandez: Totally outright.

Hearing officer: ... and you obviously have a responsibility at Accelerated because ...

Mr. Hernandez: I am a part owner of Accelerated. Cameron Hernandez is a part owner and Irene has become a part owner of Accelerated.

Hearing officer: Ok, Irene?

Mr. Hernandez: Irene Hernandez, my ex-wife, but we live together. We moved back together, but we just never got ...

Hearing officer: All right. So in essence, it's between the various parties, there's a joint ownership of A-1 and Accelerated, or a shared ownership?

Mr. Hernandez: They're both corporations. I don't look at it that way. The State of Utah does not look at it that way as far as my taxes and my corporation and everything go. I'm the owner of

one ... because at A-1 I own all the stock in A-1, but I don't own all the stock in Accelerated. I share that ...

Hearing officer: Yeah, so you're a part owner of Accelerated, a full owner of A-1 ...

Mr. Hernandez: I'm a full owner of A-1 and nothing to do with Chester Goodman. He's on his own.

Hearing officer: Now does Chester Goodman pay some amount of rent or something?

Mr. Hernandez: He was paying \$100 a month.

Hearing officer: To use the shop?

Mr. Hernandez: To use the shop.

Hearing officer: Was Chester storing any waste materials, asbestos or otherwise, at the shop?

Mr. Hernandez: Not that material. He had some sinks there, you know, and some stuff. I don't know, the sinks may have had a coating. You know how they have the coatings under the sink? I never noticed too much of what he brought in, but it wasn't significant. I don't think he really had anything to do with any of the insulation or bags.

Hearing officer: Ok. Now Accelerated's business is what?

Mr. Hernandez: They're a general contracting company. Basically they do ... actually they do salvage mostly. I have my B100 tests and stuff like that pass. I just never turned it in because we've been in this environmental company.

Hearing officer: A B100 test?

Mr. Hernandez: Yeah.

Hearing officer: What's that?

Mr. Hernandez: That's my building for general contractors, my B100, all my tests for the state.

Hearing officer: I don't know that, so it's your general contractor license?

Mr. Hernandez: License and stuff, yeah. You have to have these tests passed.

Hearing officer: Now you say you have it but you have not turned it in. Is that on behalf of A-1?

Mr. Hernandez: Turn it in to get a pass.

Hearing officer: On behalf of A-1 or on behalf of yourself?

Mr. Hernandez: On behalf of Accelerated.

Hearing officer: For Accelerated.

Mr. Hernandez: Yeah ...

Hearing officer: So Accelerated is a general contractor, but not licensed?

Mr. Hernandez: It's not licensed. It's just doing salvage.

Hearing officer: Ok. Now does Accelerated have any standing before the Division of Air Quality with regard to hazardous waste removals or permits, asbestos license or anything like that?

Mr. Hernandez: No, I don't think so. I don't quite get the question, but no, they don't have anything to do with the Division of Air Quality. It's not licensed to do asbestos.

Hearing officer: Ok. Does Chester Goodman have anything of that nature, such as an asbestos license?

Mr. Hernandez: No.

Hearing officer: So the only party involved with the shop that has any expertise in asbestos is A-1?

Mr. Hernandez: That's correct. That's why Accelerated hired A-1, or Clint Sugden, to come in and take the sample out of the trailer. Because Accelerated wanted to make sure that ... all they had was the report that A-1 had give them beforehand.

Hearing officer: Would it be fair to say that Accelerated relies on A-1 with regard to proper management of housekeeping and other matters regarding asbestos, anything like that stored in that facility?

Mr. Hernandez: Actually, I would say not. I would say each part has their own share of responsibilities in the shop. Now, Accelerated ...

Hearing officer: Is the shop partitioned?

Mr. Hernandez: No, but Accelerated put ... if you'll notice the video, they separated Accelerated's insulation and stuff, you know, from A-1's regular asbestos that they would hold there until they had time to take it out to the trailer.

Hearing officer: What I'm trying to understand is with the co-mingled ownership and the



.. even though there may be some quasi separation of whose junk it is into piles, there appears to be only one entity that has the technical expertise among this group of people about the requirements of asbestos management and that's A-1.

Mr. Hernandez: That would be true, but they also ... they took bags from the trailer, Accelerated, without A-1's permission, so A-1 did have not no control over them using the asbestos bags to put their insulation in. Two, they were never supposed to bring the insulation to the shop. They were supposed to take it straight to their house, put it in their attic and that was it. All of a sudden I ended up with these bags of insulation in my shop and, I believe, deported Juan and Jose. They just disappeared. They're no longer at their house, you know, no way to get a hold of them or anything, so ...

Hearing officer: Now, given your holding the asbestos license and being properly trained in asbestos management control and abatement and so on, what is your understanding of how material must be handled once it is in a bag that has been preprinted with asbestos warnings on it?

Mr. Hernandez: If it was me I would have never put that material in an asbestos bag. Evidently, these 2 people that we're talking about, Jose and Juan, can't hardly speak English let alone read what something says on the side of it. What they did was they just grabbed some bags and put this insulation in it. They had no idea of any regulations or any problems that it would cause. They did this on their own. I didn't give them permission to use asbestos bags. All I told them was that they could take the blown insulation and put it in their house.

Hearing officer: Ok, now you told them that they could do that on the basis of your acting in what capacity?

Mr. Hernandez: Off of Clint's inspection report. We went off of Clint's inspection report. Clint said, hey, this house ...

Hearing officer: Well, it wasn't on the what basis, it was in what capacity were you acting at that time? It appears, based on the daily reports and Cameron's referring to you that you were acting in a management capacity for Accelerated.

Mr. Hernandez: He was the foreman. He was writing all of this stuff. That's why he's on the report.

Hearing officer: And you were acting in a management capacity for Accelerated?

Mr. Hernandez: I'm also his dad. So he looks at me as the authority and the one to make all the decisions anyway.

Hearing officer: Yes, but are you an officer for Accelerated?

Mr. Hernandez: I'm an officer for both of them and Cameron's an officer for Accelerated.

Hearing officer: Ok. So what I'm trying to determine here is employees make mistakes and they make them all the time. My gosh I know that. I've been a manager for a long time.

Mr. Hernandez: I agree with you totally on that one.

Hearing officer: Ok, but that does not absolve management from the responsibility of correcting a problem when it occurs or taking action to control a situation if it occurs. What I'm trying to determine here is you had some people, a couple of guys named Jose and Juan ...

Mr. Hernandez: Yeah, and Chester Goodman.

Hearing officer: And then Chester Goodman.

Mr. Hernandez: They worked on the ...

Hearing officer: Who apparently erred in terms of putting some material into bags that were intended for asbestos.

Mr. Hernandez: That's true.

Hearing officer: And I'm trying to determine is what's your management responsibility once that happens to remedy that because management is ultimately accountable, especially an officer of the company.

Mr. Hernandez: Yes we are. But we figured with the tests and we know, we've seen the material that they took come out of a place that had been tested and had no asbestos. So we told them they could. That's first. No one give them permission to take empty asbestos bags. Empty asbestos bags is not something that we lock up as a management, you know, procedure. No one locks empty bags up. They took the bags and filled them up with this insulation, was supposed to take it all to their house and dumped it in their thing. They brought some back to the shop without me knowing about it till they were there. And that's ... the only thing I could do after

that is once the Health Department come over to my shop because I thought I was throwing away blown insulation that was left in my shop by 2 Hispanic people. So I put this in a trailer and was taking it off. Steve Beach come by. He took some samples and some pictures and I thought, well, I don't want to get in trouble. I want to know what's going on. I'm taking my own samples. So I called Clint up. Clint come down and took these samples. I guess I was acting on behalf of Accelerated at that time, or maybe both companies. But I wanted to know if there was asbestos in that stuff because anytime someone takes samples in my shop I'm scared, you know?

Hearing officer: Uh huh.

Mr. Hernandez: And when the samples come back less than 1% and my facility's not a regulated project and I know that this insulation didn't come from an asbestos regulated project, I knew it was a non-asbestos product.

Hearing officer: Is there any requirement to control the use of the bags that are intended for asbestos removal?

Mr. Hernandez: No.

Hearing officer: Suppose a bunch of bags end up in the county landfill full of material.

Mr. Hernandez: DAQ would still have to sample the bags and make sure that at least the presence of asbestos was there.

Hearing officer: Ok. Do you have any other questions for him, Chris?

Mr. Stephens: I just have one or 2 more. Ok, now it's beginning to be getting a little bit more clear to me. You're a principle in both Accelerated and A-1, correct?

Mr. Hernandez: What do you mean by principle?

Mr. Stephens: Ok, you're either an owner or part owner of both, right? You're an officer ...

Mr. Hernandez: I'm a full owner of one and part owner of the other.

Mr. Stephens: And part owner of another, so ...

Hearing officer: Excuse me, but he also, I think, acknowledged that he's an officer of both.

Mr. Hernandez: I'm an officer of both.

Mr. Stephens: Ok, for the question I'm going to ask that's sufficient. I asked Clint earlier about the origin of the asbestos bags that Juan and Jose had filled up at the Arbor project and I asked him where they got the bags and he said he didn't know. Yes or no, were the people who were companies that were out there working at the Arbor project, were Accelerated and A-1, true?

Mr. Hernandez: No. At that time just Accelerated was out there.

Mr. Stephens: Just Accelerated.

Mr. Hernandez: We were done. We were finished with our stuff.

Mr. Stephens: Ok. So do you know, yes or no, where they got those asbestos bags that they put the insulation in? Just yes or no, either you know or you don't.

Mr. Hernandez: No, I don't.

Mr. Stephens: Ok. That was my last question.

Hearing officer: Then one other question I had was after you did the scraping of the ceiling at Pheasant Hollow in the Roderick home, did you do any testing to confirm that asbestos was removed and that there was no residual in those areas?

Mr. Hernandez: We do a visual inspection. Basically, some of it was pulled completely down so there wasn't much of a visual to do. Where we scrape it we give a visual inspection, we look at it. There's no visible debris that we can see, then we apply our lock down, which we applied to them surface ... only the surfaced areas that were in the containment are involved. We actually lock down above where we pulled out the ceiling, but that was only on that family living room part. The back bedrooms and the bathrooms we either separated or scraped off and they were visually inspected and then locked down.

Hearing officer: Ok. So lock down is basically a sealer?

Mr. Hernandez: An encapsulator, correct.

Hearing officer: An encapsulator?

Mr. Hernandez: Correct.

Hearing officer: And are you required to do any further sampling and analysis through a certified lab of any area after that kind of thing is done?

Mr. Hernandez: No, just a visual inspection of no asbestos debris.

Hearing officer: What about free dust wipes or anything like that?

Mr. Hernandez: Nothing. If they've been ... all we're supposed to ... if once we can't see asbestos anymore according, and this come straight from Bryce, we can tear it down. We're done if there's no visible debris we can tear a layer down, lock down, tear a layer and get out of there.

Hearing officer: Ok, anything else, Fred? I think that's it unless there's something else to be discussed I think we've concluded.

Mr. Stephens: Do you want closing statements or anything like that?

Hearing officer: Yes. I would like closing statements from the parties if possible. Chris, are you prepared to go ahead with that?

Mr. Stephens: I believe so. We don't have a whole lot to say. What we attempted to do today is to demonstrate how the inspection works and hopefully that's been made fairly clear by our witnesses. It illustrates the various roles that the people with the (unintelligible) and the Division of Air Quality have to play and how they interact with regulated entities. In this case a regulated company, A-1, was found by the executive secretary to be out of compliance with the rules that govern their conduct and the proper handling and disposal of asbestos. And that's the reason why the notice of violation was issued, is to bring the source back into compliance and that's the overarching theme of everything that Division of Air Quality does. I would just like to thank the Board for providing an opportunity for the DAQ staff to present it's side of things and to have the ability to demonstrate, based on a challenge to it's work, that they did their work professionally and competently. So I don't have anything else to say other than that. I think that things have been laid out quite thoroughly. We've been over certain topics so much that I'm not sure it's going to benefit from bringing it up further. So thank you.

Hearing officer: Thank you. Matt.

Mr. Hernandez: Yeah. I want to say as far as telephone number on the manifest, A-1 has no argument. We have no telephone number for Pheasant Hollow. We don't contest it. We didn't know it. It's on all of our manifests now. I haven't looked it up to see if it's an actual regulation, but I do believe that somewhere in the federal regulations, they wouldn't lie, it's probably a rule. I've never been able to find that rule in there yet. It was not on our form and that's why we didn't put on there. This is a form issued by waste control management. Where it says site name and that where ECDC it used to say waste control management and all that. We just basically took their asbestos compliance manifest and that's why we were just using an asbestos compliance manifest. There was no spot for a phone number. That's why we didn't put a phone number on there. We just never put one on there. We didn't know we had to. We started doing it. Right down here we write their phone number in now. We don't know what to say other than we didn't know and now we do it. That was brought up to us by Bob Ford and Greg and so now we do it all the time.

Other than that, we put our witnesses forth to show our side. We think we've showed it adequately on why we feel we're in compliance. A-1 feels they're not even responsible parties, that they've got the actual wrong corporation sitting in here, although we would be discussing probably the same stuff. It should have been with Accelerated, that should have been given the notice of violation and not A-1. We think that we've showed everything that we need to show. We don't believe that any asbestos debris that we knew about was in the shop. We know that it didn't come from the Pheasant Hollow project. It doesn't match. And we just hope and pray that you find in our favor. That's all.

Hearing officer: Ok, thank you. What I will do at this point is take it all under advisement and confer with counsel, trace back to the regulations and evaluate the facts as we have established it during the time we've spent together today with the additional use of the administrative record and the exhibits and so on that have been submitted and then try to evaluate and determine the most ... I guess try to resolve in my own mind, at least, the areas where there are inconsistencies in information that has been provided. At that point I'll develop a finding that's for the hearing and as described in the initial opening comments, develop a recommendation for the Air Quality board with regard to whether to uphold, modify or set aside the recommendations of the notice of violation. Ultimately it's up to the Air Quality Board to schedule a hearing on this and to make a final determination whether to accept my recommendations or do something different.

Fred, is that an adequate summary of what goes on from here?

Fred: Uh huh.

Hearing officer: Anything else you have to add?

Fred: No.

Hearing officer: Ok. Thank you.

Mr. Hernandez: At this time I have these things ready. If I can just submit them to you guys right now, the dailies, they're ready, that you were going to go over.

Hearing officer: It's fine.

Mr. Nelson: One of you submit that to him and if they have no objection after viewing them we'll insert them as part of the record. If not we'll appeal from there.

Hearing officer: Ok. Anything else to bring before the body? Ok. Let the record show that the hearing was adjourned at 3:52 on January 10th and that the matter is now under advisement with me.

End of Tape